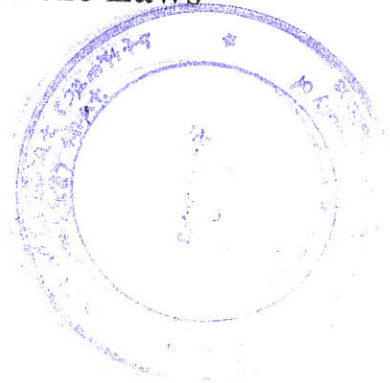


**An Examination of Ethiopian Defamation Laws in line with the  
Journalists' Perception and Practice Pertinent to the Laws**

**Theodros Woudneh**



**A Thesis Submitted to the School of Journalism and  
Communication**

**Presented in Partial Fulfillment of the Requirements for the  
Degree of Master of Arts in Journalism and Communication**

**Addis Ababa University**

**Addis Ababa, Ethiopia**

**June 2017**



Addis Ababa University

School of Graduate Studies

Journalism & Communication

The Ethiopian Defamation Laws and Journalists' Perception and Practices

Pertinent to the Laws

By

Theodros Woudneh

Advisor, Dr Negeri Lencho

Signature.....

Date.....

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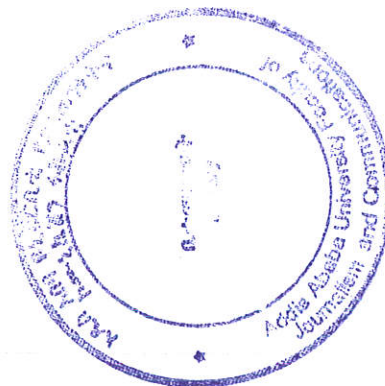
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## DECLARATION

I, the undersigned, declare that the thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been duly acknowledged.

Declared by: - Theodros Woudneh Signature \_\_\_\_\_ Date \_\_\_\_\_



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## ABSTRACT

The Ethiopian Defamation Laws and Journalists' Perception and Practices Pertinent to the Laws

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The aim of this research is to examine the Ethiopian defamation laws and the journalists' perception and practices pertaining to the laws. The Public Sphere theory and Social Responsibility Theory of the Press have been employed to inform the research. The research employed both quantitative and qualitative method of research. Moreover, the research utilized descriptive and thematic analysis method to analyze the quantitative and the qualitative data respectively. 210 questionnaires were administered to reporters and editors in the state run and privately owned media based in Addis Ababa through random sampling, out of which the properly filled and returned 142 questionnaires were analyzed. Besides, the data from the interview which were gathered from four media selected randomly through lottery system and from the purposely selected four journalists in those media were analyzed separately. What is more, the data gathered from two focus groups with eight members each selected using purposive sampling were discussion and analyzed thematically. The various defamation laws of the country were analyzed against the laws on freedom of expression. Again, the four defamation cases which appeared in the Federal First instant courts since 1999 were selected based on the availability sampling and analyzed thematically. The research found out that journalists have a negative perception towards the defamation laws; the various defamation laws serve a chilling effect; and many defamation cases of the court have a deterrence factor to the extent of self-censoring.

# **Chapter One**

## **Introduction**

### **1.1 Background of the Study**

Even though the debate about by whom, how and to what extent the media power is held may still go on, it is beyond a reasonable doubt that the media has power (Gurevitch, M, et al., 1982). This power could be used to help the society or to hurt a targeted individual, or group, or society, or government when it is abused.

Media and society are inevitably linked these days. In the modern world of the 21<sup>st</sup> century, media are directly or indirectly linked to the life of almost every community of the world. Where there is no internet or newspaper or television, there could be at least a community radio. Even in the remote agrarian community, there could be an administrative organ that could listen to the radio or hear what the media said when he/she meets the people from upper structure. Hence, one can safely say media could involve in the life of almost every society in many ways. The farmers and trader benefit from the commodity price report in the media; the young could learn and entertain with media content; the politicians could hear and watch the grievances and the satisfaction of the people; the list is long. Generally, media could show the social, political, cultural, economic, etc realities from which people could learn, entertain, and be informed.

This organ with this much involvement in the life of the community should act freely and at the same time responsibly. For the media to act freely, the right to act freely should not be obstructed; and the freedom of expression should be guaranteed. However, freedom of expression in its broadest sense has always been an area of debate. One of the areas the debates



mostly revolve around is the issue of what defamation laws should cover and should not cover; and the situations that justify the restrictions to freedom of expression and of the press. Laws that address the media and communications as well as defamation have been promulgated by governments. But the issue is still open for discussion among many.

International laws have been ratified to protect freedom of expressions in general and freedom of speech in particular while giving due attention to the concern of defamation. The main reasons to protect speech, according to Zelezny(2011), fall under two broad categories. These are social reasons and individual reasons. Under the social reasons, discovery of truth out of the differing ideas and perspectives, participating in democracy through informed decision, checking on the government by bringing those who abuse power to the publics' knowledge, and social stability through the free flow of information are put forward as rationalizations for the protection of speech (Zelezny, 2011). The individualistic reasons, on the other hand, are justifications based on the argument that speech is simply "a natural or ethical right of individual human beings- that it is intrinsically, fundamentally good in itself, independent of any pragmatic benefits" (Zelezny, 2011, p.38).

The broad legal framework within which the media operate derives in the first instance from international law. The Universal Declaration of Human Rights (UDHR) is a customary international law, which informs the way in which all other laws are interpreted. The UDHR in article 19 provides that a fundamental guarantee of the right to freedom of expression encompasses the freedom of the media. This is echoed and elaborated in Article 19 of the International Covenant on Civil and Political Rights (ICCPR).

The 1995 Ethiopian Constitution, congruent to the international laws and covenants the country ratified, in its Art. 29(2) states that: “Everyone has the right to freedom of expression without any interference. 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 media of his choice.” Although the right to freedom of expression is put in the Ethiopian Constitution as a democratic right as opposed to a basic human right, the constitution has granted a considerable level of protection to freedom of expression through any choice of medium.

According to Burnet (1992), restrictions to freedom of expression and speech can only be applied where there is a demanding social need to do so in the interest of advancing other important objectives and protecting national security. Regardless of a number of international and national legislations which protect the media, and freedom of expression and speech, these rights are at times subject to restrictions in different settings. Governments all over the world adopt different policies and laws that supposedly protect actors to not abuse the very essence of freedom of expression. In most cases, while the freedom of expression and of speech is put to the fore of constitutions, some restrictions are at the same time stated either in the constitutions or other succeeding proclamations.

In this regard, if one for example looks into the *Freedom of the Mass Media and Access to Information Proclamation* (590/2008) of Ethiopia, there are articles that reaffirm freedom of expression as stipulated in the constitution and at the same time there are articles that provide regulatory measures on practices of free expression and speech. Such restrictive measures are stipulated under the fifth part of the proclamation and hold actors accountable if breached.

Among the plethora of circumstances that are considered libelous against media is defamation. Defamation in its broadest sense is about an attack upon the reputation of another person (Zelezny, 2011). According to Creech (2007), a printed defamatory statement is traditionally called libel whereas slander is a verbal defamation. Libel includes “defamatory material that is expressed in print, pictures, or signs or is broadcast by radio, television, or cable communications media” (Creech, 2007, p. 317). The main justification backing laws against libel or slander is the intention to guard the right of reputation (Amponsah, 2004).

In order to tackle defamations towards an individual or any other entity, governments usually come up with defamation laws. For Cauchi (2002, P.3), “the law of defamation protects the reputation of a person from defamatory statements made about him to a third party without lawful justification”. Barendt (2005), on the other hand, argues that laws of defamation present difficulties as the laws present conflicts between two fundamental rights: freedom of speech and the right to reputation. Hence, due care should be taken during the application of the law of defamation. The law is dependent upon clarity of the law itself and is subject to the interpretation of the court as to what counts defamatory and what does not is sometimes blare.

The Constitution of the Federal Democratic Republic of Ethiopian in article 24(1) provides that “Everyone has the right to respect for his human dignity, reputation and honour”. This article protects citizens from any form of abuse of their rights including defamation. Article 2135 of the Ethiopian Civil Code stipulates the accountability of the journalists regarding defamation, “The managing editor of the newspaper, the printer of the pamphlet or the publisher of the book shall be liable under the law for defamation committed by the author of a printed text”.

In the Criminal code of the country, defamation by word or deed or any other way is not admissible (Article, 235(3)). The defamation could be a statements made towards the state or a person with intent to injure an honor or reputation, or a false statement spread with knowledge of its falsity, with deliberate intent to hurt somebody's reputation, and even if it is true, the person who made the defamation should prove that it was not done to heart someone or done for public interest (Criminal Code, 244(1), 613(1), 614,615,618).

The Freedom of the Mass Media and Access to Information Proclamation (590/2008) of Ethiopia in its Article 41(2) clearly states that “in an action for defamation through the mass media the court may award, having regard to the seriousness of the moral damage, compensation up to 100,000.00 birr...” Yet, what constitutes defamatory or not is left to the interpretation and decision of the court.

Journalism is a profession which needs an exercise of freedom of expression. Media the journalists use are one of the powerful instruments to shape the attitude, perception and knowledge of the society. A power which is not controlled could have a collateral effect. This is where the various media laws intervene. Defamation is one of the areas where the private and public figures' rights could be violated. The various defamation laws are meant to protect the public from the misuse of the right to freedom of expression by the media without any interference by any power. On the other hand, the laws on defamation may result among some journalists as a deterrence factor to self-censor. This is what necessitated the current study. The extent of the law of defamation and its interpretation on influencing the media practitioners needs to be studied.

## **1.2 Statement of the problem**

Defamation law is one aspect of media law in Ethiopia. The law of defamation is governed under criminal and tort laws. The reason defamation law is there is because freedom of speech and expression should not be used to hurt others nor to encroach people's right on their dignity. The law of defamation seeks to protect people's reputation as reputation is a crucial asset in political, economic and social life. The law was not in place to hamper in any way the right to freedom.

Media products are expected by the law to avoid the defamatory messages. However, avoiding defamatory materials depends on the clarity of what can be referred to as defamatory. It needs clarity of what includes and not includes defamation to avoid defamatory materials from the media products. If journalists and other media practitioners do not have a clear understanding of the law itself, there could be a higher probability of defaming someone. On the other hand, a law that is not precise in what it targets to counter as unlawful opens up an opportunity to the elites of a given constituency to stifle freedom of expression and of the media in the name of fighting defamation.

Having defamation laws by itself is not a problem as far as it is there to protect the reputation and dignity of everyone. But the problem is when the law of defamation deters the journalists and other citizens against exercising their fundamental rights of human being like Freedom of Expression and Freedom of Speech by attaching penalties which may serve a chilling effect with prison sentence or massive compensation awards (Sylvie,G., et al, 2008). This could be an occupational hazard for journalists.

Overall, laws of defamation and hearings of cases of defamation pose difficulty as the whole process demands a careful demarcation between freedom of speech and the right of reputation.

Such a difficulty is further exacerbated by the need to locate intentionality on the defendant's behalf. Although one can ascertain the existence of such dilemma in Ethiopia as well, such a conclusive remark will highly be a mere hasty generalization if not supported with a detailed study.

The Freedom of the Mass Media and Access to Information Proclamation (590/2008) of Ethiopia in its Article 41(2) clearly states that "in an action for defamation through the mass media the court may award, having regard to the seriousness of the moral damage, compensation up to 100,000 birr..." However, what constitutes defamatory or not is left to the interpretation and decision of the court.

Journalists appeared before the court because of defamation cases. The possibility of the verdict affecting the journalistic practices and the media, if there is any, needs a closer scrutiny. Moreover, the perception, and practice of the journalists towards the law calls for a closer scrutiny.

Getaneh Mekuanint (2013) conducted a research to examine what the current freedom of mass media and information proclamation (590/2008) and the actual media operation looks like. He found out that there is a gap between the law and the actual implementation. Solomon Tabor (2011) studied mainly the challenges and prospects, to institutionalize a media self-regulatory body. His study revealed that the in-house codes of conduct that many of the media possess are not practically applied and there is no enforcing mechanism in place. Consequently, the study shows, the codes of conducts have been violated and they were rarely referred to by journalists. Though these and some other studies have been conducted on issues related to media law, to the best knowledge of the researcher, studies on defamation laws of Ethiopia and its relation to the provisions on freedom of expression as stipulated by the various Ethiopian laws are rare, if any.

Defamation laws are supposed to strike a balance between protecting the media freedom and the reputation of persons. On the other hand, the media also need to act responsibly when exercising the freedom of expression lest the right of private citizens and others would not be abused. This calls at least for a functional knowledge on the various defamation laws from the journalists' side. Hence, it should be the concern of the various studies to deal with what perception our journalists have on the defamation laws and how it is reflected on their practice. Yet, studies which consider the legal aspect vis-à-vis the perception and practices of the journalists towards the laws of defamation are rare. This is the gap that the current study intends to fill.

### **1.3 Objectives of the Study**

#### **1.3.1 General Objective**

The general objective of the study is to examine the Ethiopian defamation laws in line with the journalists' perception and practices pertinent to the laws.

#### **1.3.2 Specific objective**

The specific objectives of the study are:

- a. To assess the perception and practices of journalists in relation to the Ethiopian laws on defamation.
- b. To examine whether the clauses on defamatory actions in the relevant Ethiopian laws uphold or not uphold the freedom of the press, freedom of speech and expression.
- c. To assess the application of the various defamation laws in the selected court cases in relation to the media freedom as stipulated in the Ethiopian Constitution and the pertinent Proclamations, and other International legal instruments.



## **1.4 Research Questions**

The study attempts to answer to the following basic questions:

- a. How do journalists perceive, and practice pertinent to the Ethiopian laws on defamation?
- b. Do the clauses on defamatory actions in the various Ethiopian laws uphold/ not uphold the practice of freedom of speech and of the press?
- c. How do the various defamation laws being applied in the selected court cases in relation to the media freedom as stipulated in the Ethiopian Constitution and the pertinent Proclamations, and other International legal instruments?

## **1.5 Significance of the study**

The study sets to identify the perception of the media practitioners regarding the defamation laws and how the court cases on the defamation have been interpreted and affected the journalistic practices. It also assesses the legal documents pertinent to freedom of expression and defamation. Accordingly, the study will add to the existing portion of understanding about the perception towards the laws of defamation in Ethiopia and the actual practices. It will also serve as a background for further studies in the area of freedom of speech and defamation in Ethiopia.

The significance of the study is to the law makers, law interpreters, journalists and the general public. The research aspires that the findings of the study could create awareness about the laws of freedom of expression and media freedom on one hand, and the defamation laws on the other. Accordingly, the law makers could revisit the laws on defamation and its effect on freedom of expression. The law interpreters also could see if there is any gap that their interpretation of the

law of defamation may create on exercising the freedom of expression. The journalists could also benefit from the study by better understanding their rights and responsibilities.

### **1.6 Scope of the Study**

The current study focuses on the Ethiopian defamation laws and the journalists' perception and practices pertinent to the laws. Moreover, it examines the federal court cases on defamation vis a vis the various defamation laws of the country. The court cases which were considered for the study have been those which were taken to the court since 1999 up to the present. This year was taken as starting point because in this year, the criminal law was amended and the law included defamation under criminal offence.

The selected state run and privately owned print and broadcast media and the Journalists working in those media were included in the study. However, those media and journalists based outside of Addis Ababa were excluded from the study because of time and resource constraints.

### **1.7 Limitation of the Study**

The researcher targeted the defamation cases which appeared in the federal courts. There could be the same cases in the regional courts which could give a different angle to the issue. However, because of the time and geographical constraints the court cases in the regional courts were not included in the study.

## **1.8 Organization of the study**

This study has been organized in five chapters. The first chapter comprises a brief background of the study, the statement of the problem, the objectives of the study, the objective of the study, the research questions, the significance of the study, the scope of the study, the limitation of the study and the organization of the study. The second chapter is devoted to the review of the various related literatures. The third chapter deals with the methodology of the study. The fourth chapter is dedicated to data presentation and analysis. The last chapter is allotted for conclusions and recommendations.

## **Chapter Two**

### **Review of Related Literature**

#### **2.1 Introduction**

The laws and regulations should not be the bottle neck for the media. On the other hand, the media should act responsibly. The media is trustworthy when they always keep the balance between the source and the audience in the spirit of serving the people. Balancing the right and the responsibility is what is expected from the practical democracy that recognizes the freedom of speech and the press. The current chapter discusses the media and its role in the society, the concept and laws of defamation, the freedom of expression, and defamation in international laws, journalistic ethics and defamatory laws, and the theories that govern the present study.

#### **2.2 Media and its role in the society**

The role that the media plays in the society is a long list. It is through media that the society relives its woes when grievances are high, it is the media that provides a public forum when opposing views are otherwise hidden; it is through them that the government makes its policies known, it is the media that reveals the deeds of the corrupt officials, and the measures taken on them.

This all remain ideal if it is not supported by the concerned government body. Some authorities curb the free flow of information through their strict laws. Where there is no free flow of information through formal media channels, people circumvent the information blackout through rumors and citizen journalism in social media. The former was rampant since old days while the latter is a recent phenomenon both in Ethiopia and the world.

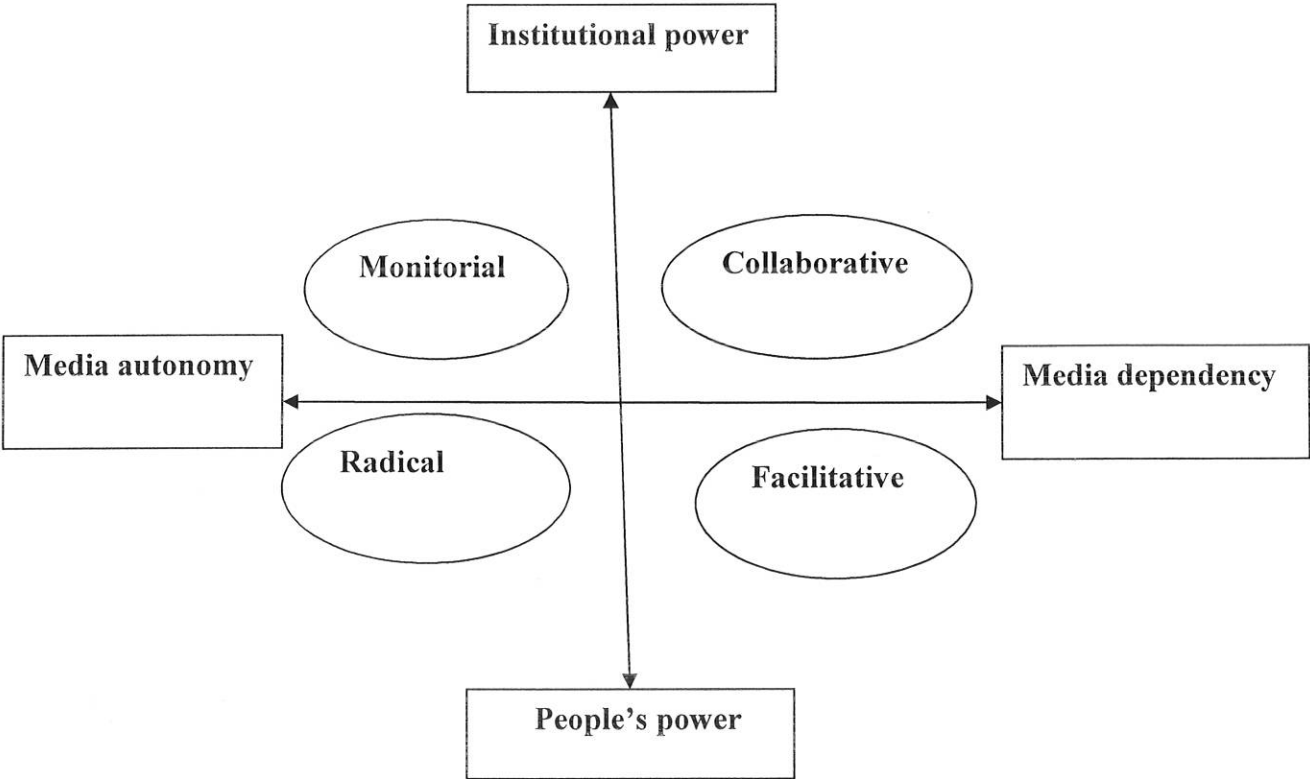
Media and society have always been linked in one way or another. Media float at the center of the link between the state, the market and the citizens or the civil society (Galtung, 1999 cited in Nordenstreng, 2006). It is true that there are different models of media operating in different society. The concern about the link between the media and the state is high on the agenda of politicians, media professionals and human rights advocates (Nordenstreng, 2006). This is becoming true even in the states which boast of their democratic apparatus. The tense relation between Trump and the American media is a good example. The other critical issue, however, is whether a certain media is established to serve the society or to make money.

The media sets the agenda that the people is expected to consume, it frames the agenda that the people focus on, it informs the people on the issues that matter in their daily activities, it entertains, enlightens, etc. it touches the social, political, economic, cultural, etc aspects of our life. In general, the media touches almost every aspect of our life.

When the role of the media is seen from the politics and democracy perspective, media can follow different models in different countries. Daniel Hallin and Paolo Manzini (2004) have a triangular model which comprises the “polarized pluralist model”, “democratic corporatist model” and the “liberal model”. Denis McQuail (2005, pp. 185-6) has a different approach which comprises four models: the “liberal pluralist or market model”, the “social responsibility or public interest model”, the “professional model”, and the “alternative media model”.

It could be more relevant to the current study to have a fair discussion about the model which specified the role media have in the society. Clifford Christians and others suggest four roles for the media based on their relation to the dominant political-economic powers, on the one hand, and the citizens of the civil society on the other (Clifford Christians, et al., cited in Nordenstreng, 2006). Based on the relation of the media to the power system in the society, the following

model shows the Monitorial, the Collaborative, the Facilitative, and the Radical roles the media could have in a given society.



**Figure- Four normative roles of media**

In the first quadrant, we find the collaborative role. It is in the intersection of media dependency and institutional power. The media directly serves the government and other powers indorsing the “lapdogs” role. The monitorial role is put in the second quadrant where the institutional power and media autonomy meet. In here, the media takes itself as neutral which observe the world objectively and which play its watchdog role. However, as the source of information is

still the powerful, there could not be an escape from the agenda setting power of the source of information. The third quadrant shows the radical role of the media. It is where the media autonomy and people's power meet. It has an oppositional approach where antiestablishment sentiment prevails (Nordenstreng, 2006). Though it used to reflect the Libertarian movements, today it is mainly the case among the social movements and the intellectuals (Nordenstreng, 2006). In the model, the facilitative role of the media is in the fourth quadrant where People's power and dependency converge. The media, while playing this role, distance themselves from the powerful and become more close to the people by providing the public forum where people can participate in the political process. It also entertains the "public journalism".

Aside from the above roles, the media also play a developmental role in developmental states. This is a model which is called development journalism where the media plays a role of publicizing the development endeavors of the government and the people while parallelly playing an investigative journalism role. The state run media in Ethiopia strictly follow this latter model.

In a relative contrast to what is listed in the above model, the role of media in development state is not a fourth state role. The media is taken as support for the development agenda. Consequently, the media is expected to follow the development journalism model following the presentation of a policy document by the Ethiopian government led by the EPRDF in 2008 (Skjerdal, 2011). The policy allows the media to pursue investigative journalism while promoting good governance, and the development endeavors and achievements of the country (Draft Media Policy Document, 2008). It is expected from the development journalism to prioritize the pressing development issues of the people which include socioeconomic, political and good governance (Negeri, 2012).



Journalists in Ethiopia are encouraged “to respect the greater cause (nation building) above professional values (media independence)” (Skjerdal, 2011, p.68) as all societal forces-including media-are expected to take part in the process of the country’s renaissance which envisions to be among the middle income countries within two to three decades (Skjerdal, 2011). Hence, the customized version of development journalism that Ethiopia is applying “claim to promote national interests while at the same time safeguarding independent reporting” (Skjerdal, 2011, p.59). However, the findings of a study by Skjerdal, (2011) show that the Ethiopian development journalism has problems when tested in practice especially by the state run media. They have been “challenged when they try to convert the framework into actual media practice. The problems are threefold: the ambiguity of development journalism as a concept and practice; the political inclination of the state media; and a lack of participation by the public”. As the present study examines the perception and practice of the journalists in relation of the country’s defamation laws, it is considered that the model may shape their perception towards the laws.

Whether it is in Ethiopia or elsewhere, the media need to exercise their role freely. Yet, they need to have rules, regulations and laws to make sure that they function responsibly while they are playing their role in the society independently. The media may follow any of the models mentioned above or focus on any of the roles in the model based on the power behind it. But it should be taken into consideration that the media is still the public sphere which has to act in a socially responsible way. This is where the laws such as defamation laws intervene.

### **2.3 Defamation: Concepts, the Laws and the Media**

Defamation is a generic legal term which refers to an act of unmerited undermining the reputation of any person. The damage to the reputation of the person could be either in writing or

in speech. The term libel is used to refer to published or broadcasted defamatory statements while slander is used for a privately spoken defamatory statement which is not preserved in any printed form or broadcasted (Creech, 2007). “Where a remedy is successfully sought for defamation, any award that is made must be proportionate to the damage suffered, and be of a sum ‘necessary’ to provide adequate compensation and to re-establish the victim’s reputation.” (Jayawickrama, 2002, p. 712).

However, what to include and exclude from defamation is a point of debate. For example, is the criticism of a public figure, especially the person serving in the public office with high rank can be counted as defamation? For Jayawickrama (2002), it can’t be, as far as the criticism is impersonal.

The criticism of a politician may be understood as defamatory if such criticism throws a considerable degree of doubt on his personal character and good reputation. However, the law of defamation must be interpreted as precluding impersonal attacks on governmental operations from being treated as libels of an official responsible for those operations. It is of the highest public importance that a democratically elected governmental body should be open to uninhibited public criticism. Since the threat of civil actions for defamation induces the chilling effect or tendency to inhibit free discussion and places an undesirable fetter on the freedom to express such criticism, it is contrary to the public interest for governmental institutions to have any right to maintain an action for damages for defamation (Jayawickrama, 2002, p. 712).

The defamation laws are promulgated to protect the reputation of a person not the character of a person. Reputation is what a person seems to be; while character is what the person really is. So it is the reputation of the person which can be damaged not the character. Reputation may reflect the character but not always true. The role of the media interferes here. The media sometimes can build a good reputation to a person with a bad character or can damage a reputation of a person with a good character. It is in the latter case that defamation is involved. When media reflects the real character of a person it serves the interest of the people; but when it builds the reputation of a person on false character or if it damages the reputation of the person again based on the miss represented character of the person it is not serving the interest of the people, but the interest of the others.

Defamation in most cases treated as both criminal and civil case. But most of the scholars take it as a problematic when it is treated as criminal case as they are felt to function as a chilling effect on media freedom as they curb, or threat to curb speech (McEwen, 2014).

The right to honor a person's reputation is guaranteed under the Ethiopian laws. The 1995 Constitution of the Federal Democratic Republic of Ethiopia in its article 24 stipulates the right to honor and reputation. Article 24(1) of the constitution gives a protection against defamation when it provides, "Everyone has the right to respect for his human dignity, reputation and honor". This right entails, however, that the person who is entitled to the development of his right should not trespass against the others' right in the process of development of his own. It is stated in article 24 (2) of the same constitution that everybody "has the right to the free development of his personality in a manner compatible with the rights of other citizens". This right includes the right to reputation. The various Ethiopian laws on defamation are consistent with the constitution.

The Ethiopian Civil Code of 1960 which is still functional puts defamation in article 2044 as an offence. “A person commits an offence where by his words, his writings or by any other means he acts in such a way as to make another living person detestable, contemptible or ridiculous and to jeopardize his credit, his reputation or his future”.

The Civil Code has specific provisions which deal with defamation in media especially the press. In the media case, “Any program intended for transmission may not: Maliciously accuse or defame individuals, nation/nationalities, peoples or organization” (The Broadcasting service proclamation No. 533/2007, article 30(4, c)). What if the statement made by the defendant is true and he/she made it for the public interest?

(1) A person charged with defamation cannot in general plead in defence that he acted without intent to injure, or that he confined himself to repeating even though not believing them, allegations emanating from another, or that it was a matter of common knowledge, or that he uttered suspicions or conjectures.

(2) Where the criminal commits the act by uttering or expressing the truth, or having sufficient ground to believe that it is true, he shall not be liable to punishment if he can prove that

a) he did not have the intention to injure the honour or reputation of another; or  
b) he acted in the public interest or he was actuated by a higher interest or moral aim.

(3) Where the criminal is convicted of calumny, he may in no case exculpate himself by invoking public or higher interest (Criminal Code, Article 614).

In Ethiopian case defamation is also a criminal offence. It can be committed against an individual person or the state. The defamation against the state could be by word or by deed or any other way of abuse, insult, defame or slander which is made in public (Criminal Code, Art. 244(1)).

Criminal Code Article 613 and consequent articles provide that a person could be accused of defamation when the defamation was done with “intent to injure his honour or reputation, an act, a fact or a conduct, where the allegation accords with the truth”; or “Where the defamatory imputations or allegations constituting the injury to honour or reputation are false and are uttered or spread with knowledge of their falsity”; or “Where the criminal has acted with deliberate intent to ruin the victim's reputation; or “Where the imputation or allegation is false and made negligently” or “False accusation or denunciation to the authorities”

If defamation is so, what includes and what doesn't include defamation should be dealt with from legal perspective. The Ethiopian Civil Code in article 2045 provides that no defamation could be claimed when there is no intent to injure the defendant. Sub article 2 of article 2045 provides, “No defamation shall be deemed to have been committed where the author of the utterances or writings alleged to be defamatory had no intention of referring in such utterances or writings to any particular person” unless there could be a circumstance in which the author of such utterance or writings could have foreseen that his /her wordings may inflict an injury upon others. Moreover, a person could be exempted from defamation when his/her opinion is limited to matters of public interest unless the opinion is intentionally loaded with lie (Civil Code, art 2046). Moreover, no defamatory case will be filed when the alleged defamatory statement was made in “parliamentary debates or in the course of legal proceedings” unless such exact

statements are repeated in the same form with intent of injury (The Ethiopian Civil Code, article, 2048).

Article 2049 of the same code provides that no liability shall be brought against an author of a publication where the defamation is committed without intention of injuring someone and without gross negligence. Yet, with a request from the victim, the publisher could be forced to apologies and immediately withdraw the defamatory text. The withdrawal and an apology shall be published in the periodical of the plaintiff's choice if the periodical on which the defamatory material appears in more than a week; in another case, the apology and the withdrawal should appear in the same periodical on which the defamatory material appeared (the Civil Code, 2049).

The Code in article 2135 provides, "The managing editor of the newspaper, the printer of the pamphlet or the publisher of the book shall be liable under the law for defamation committed by the author of a printed text". In the consequent articles, the law stipulates that the person who caused the damage and the one the law declares liable could be forced to jointly repair the damage. On the other hand,

A fair compensation may be awarded by way of redress to the plaintiff or to a charity named by him, in the case of insult or defamation where: a) The injurious or defamatory charges are that the plaintiff has committed a crime or an offence punishable under the criminal law; or b) They allege that the plaintiff is incompetent or dishonest in the exercise of his profession; or c) They allege that the plaintiff, if a business man, is insolvent; or d) They allege that the plaintiff is

suffering from a contagious disease; or e) They allege that the plaintiff is of low morals (The Ethiopian Civil Code, article, 2109) .

In Ethiopian law defamation is not only taken as a civil case but also a criminal one. Anyone who defamed the state is punishable with imprisonment for at least three months or with a fine of at least five hundred birr (Criminal Code, Art. 244(1)). The crime will be aggravated when the defamation is deliberately committed against a public civil servant. It ranges from “simple imprisonment from one month to one year, and fine in cases of defamation;” or “with simple imprisonment for not less than six months, and fine, in cases of deliberate act to ruin the victim's reputation” (Criminal Code, Article 618). What is more, the name of any person who has been punished for a crime he committed cannot mention, let say in the media for the crime he served the prison terms for. The Criminal Code in article 613(1) states that “Statements made concerning a crime of which a person has been found guilty, has duly served the sentence or has been granted pardon or amnesty, with intent to injure his honour or reputation, shall be considered as defamation and are punishable” with simple imprisonment not exceeding six months, or fine.

A Proclamation to Provide for Freedom of the Mass Media and Access to Information 590/2008, in article 41(2) stipulates, “ In an action for defamation through the mass media the court may award, having regard to the seriousness of the moral damage, compensation up to 100,000.00 Birr having regard to the seriousness of the damage”. Some say this amount is too huge when compared with other penalties for criminal offences. Media need to be free of the fear of prosecution under defamation laws because of their report on the corrupt authorities.



In the next section how defamation is seen with the freedom of expression both in International and Ethiopian laws has been discussed.

## **2.4 Freedom of Expression and Defamation**

Freedom of expression is the right any human being claims to have owned by nature. This right is inalienable by anybody except in few cases for the sake of the wellbeing of a given society. Freedom of expression is protected by the international and national laws. The right to freedom of expression is guaranteed by Article 19 of the Universal Declaration of Human Rights (UDHR) when it states, “Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. The UDHR which was formulated by the UN in December 1948 is basically taken as customary international law though it doesn’t have a legally binding force on member states. Ethiopia is a signatory of this international law.

The other law by the international body is the International Covenant on Civil and Political Rights (ICPR). It was adopted by the UN on 16 December 1966, and came to force on 23 March 1976. It was ratified by 165 nations and it is formally binding. The covenant provides the right to freedom of expression in its article 19. It affirms in article 19(1) that Everyone has a freedom to have opinion; and everyone “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 his choice” (International Covenant on Civil and Political Rights, article 19(2))

The African Charter on Human and Peoples' Rights provides the rights to access information and to express one's opinion in article 9. It states, "(1) Every individual shall have the right to receive information. (2) Every individual shall have the right to express and disseminate his opinions within the law".

Moreover, the Declaration of Principles on Freedom of Expression in Africa which was adopted by African Commission on Human and Peoples' Rights in October 2002 in its article 1 guarantees:

- (1) Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
- (2) Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

The rights discussed above are all have limitations, but only under specific circumstances. The UDHR in its article 29 states that the rights are restricted "solely for the purpose of protecting the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." As stipulated by Article 19(3) of the ICCPR the freedom of expression could be subjected to restrictions which are provided by law as they are important "(a) For respect of the rights or reputation of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals". The convention narrows

the restriction on human rights only to the three conditions. These are “national security or public order,” or “public health or morals,” or “reputation of others”.

In the Ethiopian case, all the international laws that Ethiopia signed are part of the law of the land (the Ethiopian Constitution, 1995, Article 9(4)). The discussion of all the Ethiopian laws related to defamation is included under document analysis part of the research in chapter four.

On the other hand, it can be argued that some of the provisions of defamatory laws need to be included in the editorial policy of the media so that journalists could report without violating the defamatory laws. Yet, it doesn't mean that the media should be left out of responsibility lest they don't abuse their right. Media ethics is not a thing of luxury.

## **2.5 Defamation laws and the Perception of Journalists**

The defamation laws per se are not bad. But still they have to be good to avoid the chilling effect on journalism practice. “Good defamation legislation strikes the proper balance between,... the need to defend and promote free expression and the media's ability to freely report on matters of public interest and..... The right to protect one's justified reputation” (Jose, Carmen, and Carlos, 2014, p.5). When the defamation laws are bad laws, and when journalists see their colleagues being affected by those laws they tend to avoid reporting on issues which in any way lead to criticism, or they tend to self-censor. A research conducted by the International Press Institute (IPI) in 2014 to gauge the effect of the European Union's defamation laws on journalists, editors and media executives had proved this fact.

According to the study, over 80 percent of the participants answered that defamation laws have a medium or high impact on the press in their country, and a *third* of respondents affirmed that

The Society of Professional Journalists (SPJ) adopted a certain code of ethics after a thorough discussion on the matter. According to SPJ, the code is embraced by thousands of journalists voluntarily. The 1996 version of the code include: 1. Seek and Report Truth: Journalists should be honest, fair and courageous. 2. Minimize Harm: journalists should respect the people they deal with. 3. Act Independently: focus only on the public's right to know. 4. Be Accountable: Journalists should be accountable to their addressees (SPJ, Code of Ethics).

A list of dos and don'ts could be forwarded to the media practitioners, but the list may not strictly be followed by the practitioners as it varies from company to company and it is not uniformly acceptable behavior (Sylvie,G., et al, 2008). It is advisable, then, for a media company to consult its employees before imposing a readymade code of ethics as "an organization imposing standards of behavior conflicting with the ethics of a large number of employees inhibits its ability to meet its goals effectively and efficiently" (Sylvie,G., et al, 2008, p. 134). Ultimately, following ethical principles is to the benefit of the media company. "If the public perceives a media company as unethical, consumers and advertisers might decide not to use that particular media product" (Sylvie,G., et al, 2008, p.134).

So far the study tried to affirm the availability of legal frameworks on defamation both in international and national legal documents. It also stressed the need to balance defamation laws with freedom of expression as provided by the international and national laws. This serves as the base for the analysis part of the study. The analysis part also bases itself on the theory by which the study has been guided. I now turn to the discussion of the theories that the study applies.

## **2.7 Theoretical Underpinnings**

Theories guide thoughts. This could help studies to prove or disprove the established knowledge or to manifest a new one. The current study applies the Public Sphere Theory and Social Responsibility Theory to examine the deterrence factor of defamation laws and their perception among the journalism practitioners on their professional practice. The Media are one of the powerful tools for exercising democracy. This power can be used properly or can be abused. The Media are always expected to strike a balance between the power and responsibility. The two theories are presumed to help guide the study because their assumptions is about both the freedom and responsibility of the media if they are supposed to work for the true functioning of democracy and to be a true public sphere. The two theories have been discussed to show how they could be of use to the study.

### **2.7.1 The Public Sphere**

The Public Sphere theory was developed by a German Sociologist and Philosopher, Jürgen Habermas in his book entitled *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* in 1962. Habermas takes the public sphere as a nexus between the people and the state where private people contribute their thought on the public matter. It is a sphere where the private people reflect on the public matter without fear and exercising the freedom of speech and the right to opinion. The physical arena of public sphere basically includes, the coffee houses, salons, the parliaments, the newspapers, etc where the socio-political issues of public concern have been discussed. He wrote the book in 1962 when the bourgeois democracy was taking over the public sphere. It was a time when the media and elites controlled the public sphere.

Habermas focused on the issue of public participation on politics as a very important concern for democratic society and individual self-development (Kellner, 2012). His focus was on two themes: the rise of the bourgeois public sphere and the structural change of the public sphere “in the contemporary era with the rise of state capitalism, the culture industries, and the increasingly powerful positions of economic corporations and big business in public life” (Kellner, 2012, p.2). For him, the public who is informed, aware and debating on matters that concern the state, but separate from the stand of the government is necessary to have a functioning democracy. The public had been doing this openly and without fear in public gatherings such as in coffee houses, Salons, etc. long before the mass media and globalization came into existence.

When the newspapers and later the broadcast media began to appear it was supposed to be an institution for informing and enlightening the public, and providing a medium for the public to communicate with their government. However, Habermas believes, the newspapers and other mass media which are owned by few reduced the public sphere by selectively providing contents to a selected people. The media involvement in replacing the trend “is precisely that of transformation, of the mutations of the public sphere from a space of rational discussion, debate, and consensus to a realm of mass cultural consumption and administration by corporations and dominant elites” (Kellner, 2012, p.4).

The media are expected to give the public a chance to reflect on the matters of public interest so that the state could know what the public need. The question is whether the media is playing its role as a public forum instead of promoting the dominating voices, or intervening in the private life. “As the public sphere declined, citizens became consumers, dedicating themselves more to

passive consumption and private concerns than to issues of the common good and democratic participation.” (Kellner, 2012,p.4).

The media is expected to be protective of the public sphere, but in reality it is observed that the media are owned by the few powerful who exert their interest on the public sphere. Habermas’s public sphere considers media as having an important role in politics and the day to day life of the people and this sphere is being monopolized by the media moguls and the powerful behind. The powerful, whether those in the economic power or the political power category, control the law, the content, and the economy that drives the media in one way or the other. This sphere has given the people i.e. the mass, a little say as the communication is mostly one way.

Habermas’s public sphere is applicable even today in the new millennium, as the challenges to democratic rights still persist. Whether we like it or not the media has created a public sphere where ideas could be reflected, but how critical it could be depends on how much free and, how professional the media could be. The various laws which focus on media and freedom of expression are supposed to be the guarantees to the media to exercise its democratic rights freely and responsibly. But sometimes the claim is one thing while the reality is another thing. The application of the theory of public sphere in the current study is basically serves as a lens to see the perception and practice of journalists in relation to the various defamation laws which govern the media as a public sphere. The other theory the study applies is the Social Responsibility Theory of the press. The following section is devoted to the discussion of the that theory.

### **2.7.2 Social Responsibility Theory of the Press**

Social Responsibility Theory may look old. But as media are converging, so are theories (McQuail, 2010). Accordingly, the theory is in the pile of the media theories still functioning.

The media, no matter in which corner of the world they may be, are expected to be professional in gathering, processing and reporting the news or whatever content they disseminate. While doing this, they have principles, ethics, etc to follow. They often claim that they are serving the people objectively and professionally. Journalists play their watchdog role through investigative journalism, posing well-thought-over questions, gathering reliable information, revealing the sources where appropriate and verifying the information (Kovach and Rosenstiel, 2001). On the other hand, as various literatures on media content reflect, if the powerful continues to be behind the media content controlling what and how the populace should hear, see and reflect, then the claim of the media that they have a standard on how its system works is at a serious contradiction with the reality on the display (Herman and Chomsky, 2002) as some of the practices of journalists may dictate otherwise.

In 1942, there was a wide spread sensationalism, commercialism, political imbalance and a tendency of monopoly among the American newspapers. In reaction to this, a private commission of inquiry was formed (McQuail, 2010). It was also necessitated in response to the substantial fear of propaganda and totalitarianism, the anticipation of new media technologies after the World War II, and the dynamic environment of the press criticism (Nerone, 2006). The objective of the commission was to find out the areas and the situations where the press in America was triumphed or failed; to see if the freedom of expression is limited by the government censorship, by the audience's or advertisers' pressure, by the unwise owner, or by the shyness of the management (McQuail, 2010).



In its four-years-time duty, the commission interviewed the various bodies which influence the society in one way or the other such as the academia, the media, and the government, and presented a five-point report in 1947 in which it coined the Social Responsibility Theory (McQuail, 2010). The five points the report stressed on were:

A responsible press should ‘provide a full, truthful, comprehensive and intelligent account of the day’s events in a context which gives them meaning’. It should ‘serve as a forum for the exchange of comment and criticism’ and be a ‘common carrier of the public expression’. Thirdly, the press should give a ‘representative picture of constituent groups in society’ and also present and clarify the ‘goals and values of society’. The report criticized the sensationalism of the press and the mixing of news with editorial opinion (McQuail, 2010, p.146).

In 1956, three communication theorists laid four theories of the press which categorize the local media (McQuail, 2002). Fred S. Siebert, Theodore Peterson and Wilbur Schramm formulated that the local press could fall under one of these theories: *authoritarian*, *libertarian*, *communist*, and *social responsibility*. The Ethiopian media could fall under one of these or under the fifth one known as development journalism.

The authoritarian theory takes the media as an important tool to control the society. It takes citizens as incompetent to make decisions especially the political ones which help them improve their life. The state, therefore, should control the media through which it controls the society. Consequently, the state deserves to own the media. “The authoritarian type indicates that journalism is subservient to the interests of the state in maintaining social order and achieving

political goals” (Pasha, 2011, p.66). Contrary to the authoritarian theory, libertarian theory advocates that people are taken as beings born with rights and with reasoning ability. They can’t exercise these rights and speak their minds if the authority controls their rights. Accordingly, the libertarian takes media as a fourth state to make the people aware of government activities and flaws. The third category is Communist theory of the press. The media under communism has no role in pursuing the truth. It is part of the government and serves the government in propagating socialism. The fourth is Social Responsibility theory. It is like libertarian in that it propagates press freedom. But it is different from the libertarian as it advocates that the media should be governed more by social responsibility than press freedom. Hence, the media, according to the latter, is a socially responsible information provider.

The current government of Ethiopia pursues democratic developmental state as a political economy model. Developmental state model doesn’t take media as a fourth state as taken in the libertarian model which is advocated by the West. It supports neither the libertarian nor authoritarian media model. This could emanate from the belief that the journalists and journalism in the country should support the poverty eradication programs the government pursues. Consequently, the State run media of Ethiopia endorsed development journalism model particularly after the government presented in 2008 a policy document which advocated development journalism (Skjerdal, 2011). According to the policy, the media especially the state run media have the role of promoting the development of the country and good governance while practicing investigative journalism constructively (Draft Media Policy Document, 2008).

Development journalism mainly underlines that “all societal forces-including media-are expected to take part in the process” of emancipating the country from poverty and of leveling it among the middle income countries within two to three decades (Skjerdal, 2011, p.65). Hence,

journalists are prompted by development journalism frame “to respect the greater cause (nation building) above professional values (media independence)” (Skjerdal, 2011, p.68). This could make journalists cautious of what they are reporting sometimes resulting in self censoring.

The redefined versions of development journalism that Ethiopia adapted “claim to promote national interests while at the same time safeguarding independent reporting” (Skjerdal,2011, p.59). However, the findings of a study by Skjerdal, (2011,p.58) show that the Ethiopian journalists, especially those who are working in the state run media have positive attitude towards development journalism as a professional framework, “ they are challenged when they try to convert the framework into actual media practice. The problems are threefold: the ambiguity of development journalism as a concept and practice; the political inclination of the state media; and a lack of participation by the public”.

The current study is guided by the social responsibility theory because it was a given that in a democratic society the media should be free and responsible to facilitate the development and maintenance of democratic values. Hence, the laws on defamation could not be against the democratic rights, nor the media should be left to function irresponsibly. The next chapter deals with what methodology has been applied in the study which examines the Ethiopian defamation laws and journalists’ perception and practices pertinent to the laws.

## **Chapter Three**

### **Research Methodology**

#### **3.1 Introduction**

Research Methodology is about how a given research is conducted scientifically (Kothari, 2004). It is about “a way to systematically solve the research problem” (Kothari, 2004, p. 8). The present chapter is about the scientific way the study is bounded. Scientific studies need a strict application of scientific procedures so that our common sense won’t intervene. The purpose of the current study is to examine the Ethiopian defamation laws, and the perception and practice of the journalism practitioners towards the laws. To meet this objective, the study seeks to find answers to the following questions it has raised: How do journalists perceive, and practice pertinent to the Ethiopian laws on defamation? Do the clauses on defamatory actions in the various Ethiopian laws uphold/ not uphold the practice of freedom of speech and of the press? How do the various defamation laws being applied in the selected court cases in relation to the media freedom as stipulated in the Ethiopian Constitution and the pertinent Proclamations, and other International legal instruments?

The study triangulated the quantitative and qualitative methods of data gathering. The descriptive and thematic methods of data analysis were used in the study. The research employed the social responsibility of the media theory and the Public Sphere theory in attempt to underpin the answer to the research questions it has raised. The current chapter has been dedicated for the discussion of the methodology applied, which includes the methods of the study, the data source, sampling techniques and procedures, data collection tools, and method of data organization and analysis.

### 3.2 Methods of the Study

The choice of method rests on “the problem to be investigated, purpose of the study, theory base, and nature of the data” (Roberts, 2010, p. 141). Accordingly, a given study could choose either quantitative or qualitative methods or both. In the current research the quantitative method was applied through questionnaires while the qualitative method of the in-depth interview and focus group discussion supported the latter. In addition to these, document analysis was also used to see the pertinent legal documents and court cases. Hence, the current research employed the mixed approach. The mixed approach is helpful because it mitigates the impact of the disadvantages of using a single method and it gives a chance to exploit the advantages of the other (Gray, 2004; Wimmer and Dominick, 2006). By doing so, the findings of the research won't be the product of a single method (Graber, 2004).

The quantitative method is basically designed to acquire objective numerical data. It is the use of data in numbers which could be changed to words to explain or predict or describe a phenomenon (Blaikie, 2003). It requires a much care during the planning and administration stage so that valid and manageable data could be obtained (Gunter 2000). The quantitative method best applied in the current study to see the perception, and practice of the journalists in relation to the various Ethiopian defamation laws. Quantitative method falls under the descriptive method. Consequently, the study employs descriptive method.

The other method of the study is qualitative method. The method was chosen for the study basically because it enables us to “place mass communication research in the wider framework of research.....” (Jensen and Jankowski, 1991, p 2). The qualitative method gives an opportunity to investigate examples and experiences of the respondents which help fill the gap of

understanding the phenomena from literatures or the mere theoretical explanations and make the relevant connections (Kvale and Brinkmann, 2009).

It is now becoming a norm to triangulate the various methods in the study of media outputs and media production processes (Gunter 2000). The mixed approach, through triangulation, helps us to answer the research questions in a better way by filling the gap the single approach could have (David, et al, 2004). Hence, the study combines the qualitative and quantitative methods with document analysis based on the specific research question. The first was used as it is an appropriate method to identify the perception and practice of the journalists towards the country's defamation laws while the second was used to see how many of the journalists positively/negatively perceive, and how many of them act according to the law. In studying, "values, beliefs, understandings, perceptions, meanings, etc., qualitative study designs are more appropriate as they provide immense flexibility"; but if the focus is on measuring "the magnitude of that variation, 'how many people have a particular value, belief, etc.?' the quantitative designs are more appropriate (Kumar, 2011, p.104). Triangulating the two methods, however, could help to come across to a better description and explanation of the phenomena under scrutiny (Gunter 2000).

In the current study, the data from both quantitative and qualitative methods could give an insight on where the journalism practitioners stand in relation to the defamation laws. The document analysis could give an understanding about the various Ethiopian defamation laws in relation to the freedom of expression and freedom of the media.

### **3.3 Data Source**

The present study analyses the various data which were collected for the study at macro and micro levels. The macro level focuses on legal documents which were qualitatively analysed; while the micro level focuses on data from the primary sources which are predominantly quantitative, and with substantial amount of qualitative data.

The sources of the primary data are journalists of both the state run and private media which are based in Addis Ababa. The secondary data are from the laws under the jurisdiction of the federal government. In addition, the legal cases in the federal first instant court which are related to defamation have been taken for analysis.

### **3.4 Sampling Techniques and Procedures**

While collecting data, it is advisable to have a census when the population is small. But such is not a case in many researches. Moreover, “many a time it is not possible to examine every item in the population, and sometimes it is possible to obtain sufficiently accurate results by studying only a part of total population. In such cases there is no utility of census surveys” (Kothari, 2004, p.55). As a result, researchers opt to take samples. The question that may be raised is not why samples are taken but how they are taken. If the sample is taken in unbiased way, if it follows the scientific method, the result could be applicable on all the population.

Under this section, sampling techniques and procedure and the time frame for the data collection have been discussed. The data for the study have been collected from journalists in both state run and privately owned media, from the in-depth interviews and focus group discussions with journalists, and from the court cases.

### 3.4.1. Sampling

It is not practically and financially possible to have a census in many qualitative and quantitative researches; so is the case in the current study. Hence, taking samples is the way out. If the samples are taken with scientifically correct procedures, it is possible to generalize the results (Dawson, 2007).

The study uses availability sampling for selecting the media outlets. Accordingly, all the state-run and privately owned media which are based in Addis Ababa were included in the study as the Ethiopian media outlets, both the press and electronics are highly, if not totally, concentrated in the capital city. Besides, those media which are based out of Addis Ababa were excluded because the regional state based media are not in the scope of the study. This is because of time and resource constraints to access all the media in regional states. Yet, it doesn't exclude the regional media which are based in Addis Ababa. Hence, nine magazines (eight privately owned, and one state run), fourteen newspapers (ten privately owned, and four state run), ten radios (seven privately owned radios and three state run radios), and nine public television were taken as sample based on availability sampling. This made a total of forty-two media outlets available for the study based on the February 2017 data from the Ethiopian Broadcasting Authority.

Next, five journalists were selected randomly from each of the media for the questionnaire as random sampling is helpful to avoid bias that could influence the objective selection of representative population (Kumar, 2011). Hence, as the number of the media outlets, both electronic and print which are based in Addis Ababa is forty-two we will have a total of 210 subjects available to fill the questionnaire. Hence, a total of 210 questionnaires were administered to those identified media practitioners.



In selecting the media for the interview, the study directly picked the media institutions based on their experience and willingness. In qualitative method, it is possible to purposely select a subject who is relevant and who can provide rich information (Gall, et al, 2007, Kumar, 2011). Accordingly, four media, two from each of the government and private media outlets, were selected for the interview-one media from the press and the other from the electronic media in both the state and private media were selected in the same way. This is because it gives a chance to accommodate the diversity of opinions. Accordingly, Fana Broadcasting Corporate and Addis Fortune Newspaper were happened to be the media selected for the interview from the private media while the Ethiopian Herald and Ethiopian Broadcasting Corporation were selected from the state run media.

Several researchers agree on the idea of purposive sampling as it is purposely purposive (Rubin, A., Haridakis, & Piele, L., 2010). Hence, the individual participants from the already identified media were selected based on purposive sampling. Accordingly, those journalists involved in programs related to the law were selected purposely as they are presumed to have access to the various defamation laws. One journalist from each of the four media was selected to have a manageable sample size as transcribing the interviews is laborious and time consuming task.

The data from the focus group discussion is expected to enrich the quantitative data. The study again applied purposive sampling for the FGD as well. Aside from the facts discussed above, purposive sampling is a form of non-probability sampling in which decisions concerning who and what to be included in the sample are taken by the researcher, based upon a variety of criteria which may include the relevance, specialist knowledge of the research issue, or capacity and willingness to participate in the research (Oliver, 2012). The focus group discussion was

held among two groups of eight members each. Accordingly, to make the size manageable, four from each of the state run and private media, were selected for the two focus group discussion based on purposive sampling. The journalists were selected based on their willingness and their knowledge and experience on the issue. Hence, those journalists who cover legal and related issues were chosen from both the state run and private media.

As it has already been stated, the sources of data for this study were both primary and secondary sources. The availability sampling strategy was applied for identifying the relevant defamation related court cases in the media content. Only four such cases were available in the Federal First Instance courts since 1999. Accordingly, all the cases in the Federal Court regarding defamation in the media content were taken as they were manageable to analyse. Hence, all four available court cases which appeared from 1999 up to the present have been taken based on the relevance of the cases to the study. Moreover, the demarcation of the year 1999 was purposely taken because all the cases which refer to the revised Criminal Code appeared since that specific year.

Finally, the legal documents of the country which deal with defamation were selected based on availability sampling.

### **3.5 Data Collection Tools**

Questionnaires, interviews, and focus group discussion were employed to gather primary data, while document analysis was used to analyze legal documents and court cases.

It also gives a chance to have a data gathered through quantitative and qualitative method to be analyzed separately as well as in combination. Moreover, in mixed approach, it is possible to use the data gathering tools which help us to get the quantitative and qualitative data together.

A research design is “a plan that describes how, when and where data are to be collected and analysed” (Parahoo, 1997, p.142). Both quantitative and qualitative analyses are used in the study. Consequently, the data collecting tools used are those which are appropriate for the method. These are questionnaire, interview, focus group discussion and document analysis.

### **3.5.1 Questionnaire**

Questionnaires are the preferred way of data collecting tools for surveying the journalists’ perception, knowledge, and action in relation to defamation laws of Ethiopia. Questionnaire is an effective tool to collect data in the survey method (Ruane, 2005). It is a useful tool to find out individual opinion, perception, attitude and action towards a given issue (Hansen, et al, 1998). Questionnaires give the advantage of reaching a large subject with proportionally low cost, of producing the researcher-bias-free data as it is filled independently by the subject, of giving enough time for the participant to fill in, and of providing reliable data as it involves large number of participant (Kothari, 2004). Every possible effort has been made to avoid questions which could be perceived as a threat to the respondents’ privacy or confidentiality.

In this research, the questionnaire has two parts; the general information part and the specific information part. Under the general information part, demographic data were filled. The specific information part comprised two themes: themes measuring perception and practice. The former comprises closed and open ended questions; while the latter comprises closed questions based on Likert scale. According to Sapsford and Jupp (2006), responses in Likert scale could have a weight which may be coded from five to seven.

In the present research, each item in the Likert Scale has five scales with a weight ranging from 1 to 5. In the scale, 1 represents strongly disagree, 2 stands for disagree, 3 for I don't know, 4 for agree, and 5 for strongly agree.

### **3.5.2 In depth Interview**

Interviews were conducted to obtain the primary data so that the data obtained through the quantitative method would be substantiated. "In an interview conversation, the researcher asks about and listens to, what people themselves tell about their lived worlds. The interviewer listens to their dreams, fears, and hopes." (Kvale and Brinkmann, 2009, p. 1). A well-crafted interview could provide an advantage to learn a good deal from the respondent (Johnson, 2002).

In-depth interview is a data collection method in qualitative research. It has been a preferred type for the study because it seeks to uncover deep information underlined by knowledge, experiences, and perceptions of the respondents. "Depth interviews involve learning enough of the history or context so one can be able to understand and put together separate pieces into one unit of meaningful way." (Rubin & Rubin, p. 130). Johnson (2001, p.105) compares in-depth interview to friendly conversation but "the difference between friendly intimate conversation and research method is in the pragmatic purpose of the conversation." Some argue in-depth interviews could not stand alone as the only method and are usually just a part of a bigger methodology complex. However, the justification of the research purpose, trustworthiness of the interview design, and the validity of the interview process makes it possible to construct the study.

It is a conversation between two or more persons with a specific purpose (Kumar, 1999). It is widely used in media studies (Gunter, 2002). The term is used interchangeably with unstructured

interview or non-directive interview or intensive interview (Gray, 2004, Wimmer and Dominick, 2006). Yet it is different as in-depth interview, the researcher develops a framework which guides the interview. The framework is a list of an open-ended questions which gives a space for the interviewee to say what he /she has in mind; while it serves the interviewer as focus point. What the researcher basically does during the interview is formulating spontaneous questions which may develop in the middle of the interview (Kumar, 1999).

Yet, it is wise to understand the advantages and disadvantages of the data collecting tool. According to Kumar (1999), Hughes (2002), and Wimmer and Dominick (2006), the advantages of in-depth interview include: the fact that the data are collected in the natural setting, that it provides a detailed information from key participants, that it gives accurate response on even sensitive issues, that it gives a chance for immediate data clarification and cancellation, and that it gives a chance to the researcher for flexibility. Yet, it has disadvantages as it is time consuming during the interview, transcription, and analyzing process; as it relies on the honesty of the interviewee, as the researcher could be biased unless he/she is systematic to control it; as the small size of informants makes it difficult to generalization, and as it is difficult to replicate (Kumar, 1999; Berger, 2000; Wimmer & Dominick, 2006). In the current study, therefore, other data gathering tools are used to compensate the disadvantages of the in-depth interview.

### **3.5.3 Focus Group Discussion**

Focus Group Discussion is another tool for gathering qualitative data. According to Kitthananan (1999), people forward their idea, interact and refine their view when they see others generating their view which had been inaccessible without interaction. It is normally held with informants between 8 and 12 in number (Khan, 1991). Natasha, et al (2005) put the number between 8 and

10. The group discussion is facilitated by the researcher as a moderator. The moderator also has a big role in mitigating the risk that a few participants dominating the discussion (Yin, 2011). It is advisable to have more than one focus group. According to Yin (2011) it is preferable to have a multiple group to a single group as multiple focus groups give more data with variety of views. Considering this, the discussion was conducted with a group of 8 members with mixed professional level, and from different media companies. The group was mixed with reporters, editors and editors-in- chief from both the state run and private media so that there could be a variety of angles.

#### **3.5.4 Document Analysis**

Documents are sources of data and are used in relation to the research question. They are secondary sources as they were not collected for this specific research. The purpose of document analysis is to give meaning to the issue under scrutiny by interpreting the documents qualitatively (Hansen, A., *et al.*, 1998). They can be analyzed depending on the objective and perspective of a study. They can be put within a context and hence support the main tool of data collection. According to Prior (2004), the content of a document is flexible, not least because documents have always to be read and reading implies that the content of the document will be situated rather than fixed. Accordingly, the researcher has searched for documents in the enacted and ratified laws of the country and court cases adjudicated by the Federal High Court in relation to defamation and analyzed critically depending on the contexts they were written and documented.

The federal court cases on defamation and the legal documents on the defamation have been analyzed separately to see if they are upholding/not upholding the clauses on freedom of the

press and of speech. With that analysis, the pertinent research questions (research question 1 and research question 2) would be answered.

### **3.6. Techniques of Data Collection and Analysis**

The data for the research were collected both from primary and secondary sources. In the first case, the data were collected through questionnaire, focus group discussion and interview. The 210 self-administered questionnaires were distributed personally from 15 March 2017 to 20 March 2017, and 151 of them were filled and returned on 20 March 2017. Again, 9 questionnaires were found out to be invalid as some questions are not filled and the others inappropriately filled with two or more answers; hence, they were discarded; as a result, the remaining 142 questionnaires were analyzed.

The focus group discussion was held among two groups on March 22 and 23 2017; while the interview was conducted in person from 24 March to 27 March 2017. The other qualitative data were the legal documents which were collected much earlier.

The descriptive method of data analysis was used for analyzing the data gathered through those tools. Moreover, those data were thematically analyzed. The data gathered through quantitative method were analyzed using simple percentage while those obtained through qualitative method were analyzed thematically.

The court cases and the legal provisions were analyzed qualitatively and separately based on the research questions. The document analysis which also followed thematic analysis has been used to see if the interpretation of the various defamation laws by the federal courts was in consistent with the laws on freedom of expression or not, so that the deterrence factor, if any, could be identified. Moreover, the various laws on defamation were thematically analyzed. Accordingly,

the answer to most of the third and the second research questions and some of the first could be drawn from the thematically analyzed secondary documents and primary data.



## **Chapter Four**

### **Data Presentation and Discussion of Findings**

#### **4.1 Introduction**

The purpose of this research is to examine the Ethiopian defamation laws and the journalists' perception and practices pertinent to the laws. The study applied both the quantitative and the qualitative methods of data gathering to seek answers for the questions it raised. The three questions the study pursued the answers for were: How do journalists perceive, and practice pertinent to the Ethiopian laws on defamation? Do the clauses on defamatory actions in the various Ethiopian laws uphold/ not uphold the practice of freedom of speech and of the press? How do the various defamation laws being applied in the selected court cases in relation to the media freedom as stipulated in the Ethiopian Constitution and the pertinent Proclamations, and other International legal instruments? The Social Responsibility of the media theory and the Public Sphere theory were employed in the research in attempt to underpin the answer to the research questions it has raised. 210 questionnaires were administered to reporters and editors in the state run and privately owned media which are based in Addis Ababa through random sampling; out of which 142 valid questionnaires were analyzed. Besides, the data from the interview were gathered from the purposely selected four journalists who work for those four media which were selected randomly through lottery system. The focus group discussion was held among two groups of eight members of journalists who are purposely selected, in which two experts in the media law were included. Moreover, the four court cases since 1999 were selected for analysis based on the availability sampling. The study employed descriptive and thematic analysis method to analyze the quantitative and the qualitative data.

## 4.2 Data Presentation

The data gathered through questionnaire, interviews and focus group discussions, as well as the selected court cases were presented under this sub topic thematically. The study used simple percentage for analyzing the data gathered through questionnaire which comprised close-ended questions and questions with the Likert scale. The Likert scale has been used with scale of 5=strongly agree, 4=agree, 3=undecided, 2= disagree, and 1= strongly disagree.

Out of the 210 questionnaires distributed among the reporters and editors, 151 were filled and returned, of which 9 were discarded as they were incomplete. Using the descriptive method, the data in the 142 questionnaires which were properly filed and returned have been presented thematically.

The in-depth interview was conducted with the four journalists who were selected both from the state run and the privately owned media. They were two each from print and broadcast media companies, and they were those who were involved in the hard news. One of them was a female. Their experience varies from five years to 25 years. In so doing, the data which were gathered through quantitative method will be substantiated. The data presentation was done by summarizing their response to the semi structured questions under each theme which were broken down from the questions raised. The unnecessarily long explanations were cut out so that the themes could be grasped easily.

The purpose of the Focus Group Discussion is to gather the detailed qualitative data on defamation laws and its effect on the perception and practice of journalists from the expertise in the field of media and media law. There were eight people involved in each of the two groups in

the discussion, of which two were females. Accordingly, the data gathered through the Focus Group Discussion was presented thematically to substantiate the data from the questionnaire and the in-depth interview. Generally, the quantitative and qualitative data were synthesized in such a way that they would be presented thematically. Accordingly, the demography of the subjects, the perception of Journalists towards the defamation laws and the effects of the laws, the perception and orientation of Journalists towards the defamation laws, the perception and orientation of Journalists towards the defamation laws, the perception of Journalists towards the defamation laws and self-censoring, the perception of Journalists towards the defamation laws dealing with defaming of the public figure versus the protection for the right to access to information, the practice of Journalists in relation to defamation laws, and legal cases were presented as follows.

4.2.1 The demography of the subjects

Table 1: Demographic data

Variables		Frequency	percentage
Gender	Male	108	76.1
	Female	34	23.9
	Total	142	100
Age	30 and under	38	26.7
	31- 40	77	54.2
	41 – 50	24	16.9
	51 and above	3	2.1
	Total	142	100
Educational level	Highschool complete	0	0
	College diploma	10	7
	First degree	115	81
	Second degree and above	17	12
	Total	142	100

Field of Study	Journalism	50	35.2
	Language and Literature	38	26.8
	Social Science	36	25.4
	Natural Science	6	4.2
	Others	12	8.5
	Total	142	100
Experience	under 1 year	17	12
	2 to 10 years	82	58.5
	11 to 20 years	31	21.8
	21 and above	11	7.7
	Total	142	100

As it can be seen from table-1 above, out of those 142 respondents who filled the questionnaire properly, 76.1 % were males while the rest 23.9 % were females. Regarding their age, those who are under the age of 30 are 26.7%; while those who fall under 31-40 are 54.2%, and those who are 41-50 are 16.9%; the rest are those who are aged 51 and above comprising 2.1%. From this demographic data, we understand that the majority of the journalists are above 30 (73.2%). This

is a matured age to understand and assume responsibility which includes the responsibility that comes with media power.

Their education background shows that the majority of the journalists (93%) are above college diploma level. There has not been any journalist just with high school graduate certificate. 7% of the respondents hold college diploma, 81 % of them possess first degree, while 12% hold second degree and above. Their field of study is quite diversified: 35.2 % of them are from Journalism background; 26.8% of them from Language and Literature; 25.4% of them from Social Science; 4.2% from Natural Science; and 8.5 % from other fields such as theatrical art, fine arts, engineering and agriculture. The fact that 93% are above college diploma in their education and 35.2% have journalism background could show that these journalists would be familiar at least at the basic level with the defamation laws and could act responsibly.

#### **4.2.2 The perception of Journalists towards the defamation laws in line with the perceived effects of the laws**

The quantitative and qualitative data dealing with the journalists' perception towards the various defamation laws and the perceived effects of the laws on the practice of the journalists have been dealt with under this subheading. The items that the respondents reacted towards focused on: whether they feel that the defamation laws limit journalistic practice, the journalists' feeling towards the various clauses dealing with defamation, if they were driven by the journalistic principles or defamation laws, and what they feel should the legal stand on defamation be.

**Table 2: Do you feel that the law on defamation restricts journalistic practices?**

No.	Item	Frequency	Percentage
1	Yes	132	92.96
2	No	8	5.63
3	I don't know	2	1.41
Total		142	100

The data in Table 2 indicates that 92.96% of journalists feel that the law on defamation restricts journalistic practices. It is only 5.63% of the respondents feel that the law on defamation doesn't restrict journalistic practices while the rest1.41% said they don't know.

**Table 3: I feel that the various clauses dealing with defamation in Ethiopian laws have:**

No.	Items	Frequency	Percentage
1	a positive contribution towards responsible journalism	28	19.7%
2	a chilling effect on the free journalistic practice	114	80.28
3	an effect on the public's right to access information	115	80.98

This specific question allows the respondents to choose more than one response items; hence, putting the total percentage at the bottom of the table is not relevant here. The percentage is calculated for each item against the total valid questionnaire, i.e. 142. Accordingly, only 19.7 % of the respondents feel that the various defamation laws have a contribution towards responsible journalism. Out of the 142 responses nearly 80.3% perceive that the defamation laws serve a



chilling effect on the free journalistic practice while 80.98 feel the laws have an effect on the public’s right to accesses information.

**Table 4: Which one of the following are you more conscious of the effect of your violation of defamation laws or journalistic principles while writing for the media?**

No.	Item	Frequency	Percentage
1	Defamation laws	96	67.61
2	Journalistic principles	29	20.42
3	Both defamation laws and journalistic principles	15	10.56
4	I don't know	2	1.41
Total		142	100

As it is shown in table 4 above, 67.61% of the journalists were more conscious of the effect of their violation of defamation laws than the journalistic principles while 20.42% were more conscience of the effect of their violation of journalistic principles. It is only 10.56% of the respondents who said they are more conscious of both the defamation laws and journalistic principles. The rest 1.41% said they don’t know.

**Table 5: Under which category defamation should be treated in the law?**

No.	Item	Frequency	Percentage
1	Criminal case	0	0
2	Civil Case	45	31.7



3	In both Criminal and Civil Case	0	0
4	Under none of the cases	97	68.3
Total		142	100

As table 5 above shows, it seems that the majority of the journalists (68.3%) feel that the law should not treat defamation either under civil or criminal case. The other 31.7 % of the respondents feel the defamation laws should be under the category of the Civil Code. No respondent wanted the law to treat defamation under the criminal case, nor to be treated in both. This is in contrary to what is the case in the present Ethiopian laws as the law treats defamation both as civil and criminal cases.

In consistence with the facts in the quantitative data above, the data from the interview revealed that all the informants except one have the same feeling that the defamation laws have a chilling effect. They mention the inclusion of the law in the criminal case as one of the reasons. Informant No. 3 explained:

Mostly, journalists including me refrain from pursuing certain stories in fear of liability under criminal law. This has a grave consequence on the journalists’ duty to pursue the truth. I know that journalism is a sensitive business. Yet, it is still a profession that needs a total freedom. Journalists should not brag that they are untouchable, but they shouldn’t be haunted by some restrictive provisions in the laws such as antiterrorism law, telecom fraud, Criminal Code, and Media law. The journalists should be deterred from the defamatory statements in their

production, but it is enough to compensate the damage with penalties in the Civil Code (Informant No. 3).

The informants generally put that journalists in Ethiopia basically believe that the defamation cases are not many in the court because the journalists feel the deterrence factor of the laws consciously or unconsciously and stop short of investigative reporting. Informant no. 4 had even used stronger terms when he explained the matter:

The laws give an upper hand for the government to control the media and I think the laws and regulations were made to put journalists under pressure. Some of the journalists, especially from the private media sector who dare not to work under tense pressure from the government violate the rule; and they could severely be punished. As a result of this, other journalists who see this, choose not to write against the interests of any power players. Even if the cases are not defamatory by any means. You can see how defamation law has been used by some government bodies to suppress speech and limit access to information. Some government entities continue to try to control opposing content by punishing the journalists that transmit or host it and the controlling mechanism is not limited to defamation law but also other laws promulgated as cyber-crime and terrorism laws (Informant 4).

They stress that Ethiopia has found its criminal defamation laws very useful to try to control the media excessively. This could affect the journalists' interest to report on developmental issues such as good governance, corruption networks, and human rights violations. Yet, one of the informants (Informant no.1) insists that the defamation laws should remain as a check and

balance tool for responsible journalism. He said that the Ethiopian government must not immediately repeal the provisions on defamation but as democracy matures and responsible journalism flourishes, the criminal clauses on defamation will wear themselves out as they become irrelevant.

What is more, the four journalists participated on the in-depth interview were of the same stand on taking defamatory cases to the court as not a problem. The problem comes, as three of them agreed, when the defamation case is taken as criminal case. They insist that defamation should be treated as civil case so that the person claiming the abuse could be compensated. According to those three participants, making a journalism product as a criminal case goes beyond deterrence against crime. They say it kills investigative journalism. Informant no. 4 went even further when he said journalists could hide the facts in fear of defamation charges:

They (the journalists) hide the facts they have already discovered, they cut any information which they think will bother the power players and even they do not want to make any search on any sensitive issue which they cannot write the truths about. This is what I call self-censoring. Journalists, who are supposed to inform the public about the events happening around the region they live, are unable to do their task for fear of losing jobs even their lives. Consequently, self-censoring practices of by government employed journalists putting journalistic practice into danger. Preventing self-censoring is not an easy task but educating journalists and providing them a safe environment to conduct their search and publish their news stories may be helpful. This invisible threat is lowering the credibility of Ethiopian journalism and journalists. Me myself, when I am practicing self-



censoring, I feel like I am cutting the tree I planted and understands that I am putting the future of my profession jeopardy (Informant no. 4).

The other informant (Informant no. 2) stressed that defamation is not something happening quiet often and it is not a case in the government media where she works. But she said the fact that it is not happening doesn't show that they accepted the legal clauses on defamation, nor that they are "involuntarily" self-censoring because they accepted the clauses in the defamatory laws especially the criminal liability. She further said:

With regard to defamation, even if it is not a big threat to journalist like me working at state owned media. Defamation is a criminal offense under Ethiopian law, and in recent years a number of journalists have been prosecuted for criminal defamation in lawsuits brought by senior government officials. Many of the legal provisions to protect media freedom and access to information are vaguely formulated in Ethiopia's media related law, which limits the ability of many journalists to criticize the government publicly without fear of repercussions (Informant no.2).

On the other hand, one of the informants stressed that defamation could still be a criminal case as the damage it causes to the well-being of the people and the state at times may go beyond unimaginable scale. He underlined that in a country with diversified culture like Ethiopia defamatory statements could hurt the relation between people. This kind of offence couldn't be deterred without a stronger liability like criminal one.

The question that was raised to the participants in focus group discussion produced almost similar data. All participants, except one, are of the opinion that the defamation laws, especially

those under the criminal law, serve a chilling effect on the journalism practice. They discussed that the absence of investigative journalism, the mass diversion of the mass media to the soft news, and their focus on event than process while reporting matters of public interest could be the result of the chilling effect of the defamation laws, though it is not the only reason.

Generally, the focus group discussion inclined to the consensus that the various defamation laws in Ethiopia serve a chilling effect on journalists' practice by compelling them to divert from hard news to soft news, to quit investigative reporting, to focus on event reporting than process reporting, to quit any report which involves the powerful. Again, the majority of the participants believe that the defamation cases should be treated as civil offence not criminal offence and the law should treat defamation accordingly so that the journalists could avoid stressing while working on investigative journalism.

#### **4.2.3 The perception of journalists towards the defamation laws in line with the orientation they have on the laws**

Under this subtheme, the quantitative and qualitative data dealing with the journalists' perception towards the various defamation laws and the awareness creation schemes for the journalists have been dealt with. The question items forwarded to the respondents requested them: if they feel they should be oriented on the defamation laws before they start their job, and if they have taken any such training on defamation.

**Table 6: Do you think journalist should be oriented on defamation laws of the country before they start their job?**

No	Item	Frequency	Percentage
1	Yes	142	100
2	No	0	0
3	I don't know	0	0
Total		142	100

Table 6 above shows that all journalists who participated in the study affirm that they need to have an orientation on the defamation laws. It means in spite of their perception towards the laws they need to have a knowhow on the law.

**Table 7: Have you ever, by any means, taken any training on defamation laws?**

No.	Item	Frequency	Percentage
1	Yes	0	0
2	No	142	100
Total		142	100

It can easily be understood from the above table that all the respondents conform that they didn't take any training on defamation. This is in spite of their stand that journalists should be given training on defamation laws before they start their job (table 6). As we understand from table1 above, there are some journalists (61%) who have been trained to be journalists; hence, they have taken at least one course on media law. Yet, in-service training is not available for

journalists. This could have helped them to orient themselves about the defamation laws so that they can take care of the defamatory statements by themselves.

The data from the interview revealed that all the participants agree that it is the media themselves that could play a major role in avoiding the defamatory statements in their products. For this to happen, according to the informants, the media need to be careful to have a consideration of professionalism while recruiting its staff. Unfortunately, they regret that those journalists with non-journalism background directly enter to the profession without even a single training in most cases. Consequently, they said, the media should give trainings on defamation and other issues that are pertinent to responsible journalism; they should take care of their recruiting criteria so that people from the irrelevant fields of study should not stuff the staff; even the in-service trainings should be available for both senior and junior journalists to refresh their knowhow on the laws; and the media should include statements in their editorial policy vividly on what could and couldn't be defamatory in their reporting.

#### **4.2.4 The perception of Journalists towards the defamation laws in line with their self-censoring**

The subheading deals with the quantitative and qualitative data which focus on the journalists' perception towards the various defamation laws and if they self-censor in fear of the consequences. The respondents were asked to react: if they self-censor on defamatory statements in fear of consequences, and if they feel they will be accountable for defamatory statements in their story.



**Table 8: I feel that I should self-censor for the defamatory statements in my news report in any form because if I don't:**

No.	Item	Frequency	Percentage
1	the editor could cut it out any way	139	97.9
2	I could end up in jail	134	94.4
3	It would be unprofessional	30	21.1
4	It is against the law	23	16.2

Each answer to this question is compared against the respondents of that specific question not to the sum of the total subjects because it was allowed to give more than one answer for this specific question. Accordingly, 97.9 % of the respondents feel that they should self-censor their news report for defamatory statements because they think the editor would cut it out any way. 94.4% of the respondents feel they should self-censor lest they don't end up in jail. It was to the contrary of the researcher's expectation that only 21% of the respondents who said they would be unprofessional and only 16.2% answered saying it is against the law. This could show that the majority of the journalists included in the study cut out defamatory statements from their report not because it is unprofessional to defame or it is against the law; rather it is because the editor could cut it out any way or it is because they could end up in jail.



**Table 9: Have you ever thought you will be held accountable for a defamatory statement in your story?**

No.	Item	Frequency	Percentage
1	Yes	138	97.2
2	No	0	0
3	I don't know	4	2.8
Total		142	100

According to the data in table 9 above, nearly 97 % of the respondents think that they will be held accountable for a defamatory statement in their story. Again, it is contrary to the expectation of the researcher that no respondent thought he/she will not be accountable for his/her defamatory statement. Furthermore, those respondents who said “I don’t know” account only 2.8% of the total respondents. This could mean nearly all the journalists are conscious that they will be accountable for a defamatory statement in their story.

The response to the first interview question revealed that all the informants despite their media organization agree that most journalists are over conscious so that they do not include defamatory statements in their news reporting. According to the informants, this is not necessarily because they know the law or because they willingly accept the law. It is mainly because of their over sensitiveness of the consequences the law may bring. Hence, they basically, self-censor to avoid any critical statements especially on the politicians and other powerful in

their report lest they would be accused of defamation and related cases. In this regard, informant no.1 who is a journalist from the government media said:

It is true that journalists always need to consider the journalism professional ethics and the laws while doing his/her job. It is also true that each of the journalists know that the consequence of his report is grave both on his life and on his family's lives as mostly he is the sole bread winner of the family. Yet, there are some other issues. As his audiences are in millions, if he writes a defamatory statement in his report the damage he causes is grave. In consequence, the damage he causes on himself is a lot as the powerful could consider any critical statement on their performance as defamatory. Hence, it is always in the minds and deeds of Ethiopian journalists to avoid any diversion from the normal reporting let alone writing defamatory statements. The laws in a way are lashes which control the journalists from going astray as well as they guides to responsibility. The defamation cases are rare in courts just because the journalists are generally, not in detail, aware of the various laws such as criminal law, anti-terrorism law, the media law, etc which make them take their steps carefully or in other words, they self-censor (Informant no.1).

All the journalists explain with envy that journalists need to have only the journalism professional ethics in mind while writing the news, especially the hard ones. But they said mostly it is not the case. One of the informants explained further that some of the journalists go to the extent of sending the draft of their news report to the institutions they reported on to comment before it went on air or printed. He said this kind of practice is not called consciousness of the law but a mere self-censorship aided by the invisible hands.

Participant no. 3 of the focus group stressed her concern:

You can see how the increasing number of media regulation laws these days. It shows how defamation laws have been used in Ethiopia to aggravate self-censoring. Self-censoring practices is becoming a serious threat for the future of journalism in this country; it happened because of the law and the leaders at different levels. Journalists employed by the government, working with me are forced self-censoring by power players. Many of the legal provisions to protect media freedom and access to information are vaguely formulated in Ethiopia's media related law, which limits the ability of many journalists to criticize the government officials publicly without fear of repercussions (Participant no. 3).

We can see from the response that they are not of the opinion that the defamation laws needed to be discarded, but the journalists are subconsciously considering of avoiding the risk that comes with defamatory statements rather than to focus on reporting the hard news without fear and favor.

#### **4.2.5 The perception of Journalists towards the defamation of the public figure in line with the protection of the right to access information**

Under this subheading the quantitative and qualitative data dealing with the journalists' perception towards the various defamation laws and the protection for the right to access to information have been dealt with. The items that the respondents reacted towards are: if they think the law protects the allegedly defamed person or the people's right to information, and if they report wrong deeds of public figure or stop short in fear of legal charges.

**Table 10: the defamation laws protect the reputation of the public figure covered by the media more than the right of the people to access information**

No.	Item	Frequency	Percentage
1	Yes	100	70.42
2	No	19	13.38
3	I don't know	23	16.2
Total		142	100

The 142 respondents who reacted to the question varied in their answer. Yet, the majority (70.42%) of them feels that the defamation laws protect the reputation of the public figure covered by the media more than the right of the people to access information. It is only 13.38% of the journalists both in the state run and private media who said “no” to the question. The rest 16.2 % said they don’t know if the defamation laws protect the public figure more than the right of the people to access information.



**Table 11: Do you feel that if you report about wrong deeds of a certain public figure or organization, they sue you on defamation cases?**

No.	Item	Frequency	Percentage
1	Yes	135	95.1
2	No	3	2.1
3	I don't know	4	2.8
Total		142	100

The figure in table 11 above indicates that 95.1% of journalists feel that they will be sued for defamation if they report the wrong deeds of the public figures while 2.1 % of the respondents said that they don't feel so. Yet, 2.8% of the journalists said that they didn't know what they felt.

In line with this, all the informants who participated on in-depth interview agreed that the law should treat journalists fairly. However, three of the participants went as far as saying all the provisions in the Criminal Code should be repealed. They say that these provisions undermine the freedom of expression, and they are the basis for all the controversies surrounding the defamation laws. They say that most of the cases taken as defamatory are journalists versus the powerful individuals or individual companies, or government body that needs to be investigated. If journalists are deterred by the laws which can treat them as criminals just because they revealed the misconduct of the public figures, the free journalism practice that could help the development of the culture of democracy as well as competitive economy would be affected. Yet, one of the informants insists that the laws are not as harsh and they should be maintained.

The data from the focus group discussion reflect the same sentiment. Most of the participants expressed their concern that the fact that the defamation in the media product is still in the criminal law is not fair. They think that defamation could be a good excuse for public figures to lock up a journalist with the good performance in investigative journalism. They all agree that the Ethiopian defamation laws should be revised to ease the clauses on defamation so that the journalists feel confident to report on any public figure they find an issue to be investigated and reported to the people. They raise the idea that Ethiopians have a tradition of respecting the law because it is a country where natural law laid a strong foundation for modern law and because the long history of monarchial rule left its trace in the law as people believe that the laws are meant to be obeyed as they belong to the Devine. Participant no. 4 explained this idea by saying:

There is a saying in Ethiopia that goes: “Nigus ayikeses semay aytare” the meaning of which is the king can’t be accused, the sky can’t be tilled. You know what it means? It means the king is always right, so don’t take him to court or write anything negative against him. These people of Ethiopia say, “behig amlak” it means the law belongs to God. Hence, it is the law abiding people we have in this country long before the modern laws came to appear. My point is anything you write against the powerful could still be taken as defamatory. And a journalist could be treated as criminal just because he did let’s say an investigative reporting (participant no. 4).

The general consensus of the discussion under this issue was that the defamation laws should be eased so that the journalists could investigate issues of public interest and report to the people without fear or favor. Moreover, all the participants except one put their belief that the defamation laws should be treated under Civil Code not under the Criminal Code. The seven

participants who took the same stand on the question under discussion said that the freedom of expression is best protected if the laws relieve the journalists of the burden of self-censoring as a consequence of which they stop short of full exercise of their freedom of expression, especially on the matters that involve the public figure. Only one of the journalists expressed his opinion that the laws are good and they should be maintained. His explanation was that the laws are not the problem, but the interpreters are.

The data presented above under four themes dealt with the perception of the journalists towards the various defamation laws of Ethiopia. The research further pursues what the practice of journalists in relation to the various defamation laws looks like. The data regarding this issue presented below.

#### **4.2.6 The practice of Journalists in line with defamation laws**

The items that show the practice of the journalists in relation to the various Ethiopian defamation laws is as important as their perception. This is so because at times practice could be driven by perception.

Table 12 The practice of Journalists in relation to defamation laws

Items which show Practices of journalists in relation to defamation laws	Level of agreement to the journalism practice in relation to defamation laws											
	Strongly disagree		Disagree		Undecided		Agree		Strongly agree		Total	
	Freq	%	Freq	%	Freq	%	Freq	%	freq	%	freq	%
I refrain from pursuing certain stories in fear of liability under certain provisions on defamation	3	2.11	11	7.75	17	11.97	38	26.76	73	51.41	142	100
I always make sure that my stories do not defame any person	0	0	0	0	3	2.11	59	41.55	80	56.34	142	100
I mention the name of a person who was found guilty by the court in my story about the crime he/she committed even if the person served his/her prison terms	8	5.63	30	21.13	4	2.82	30	21.13	70	49.29	142	100
I sometimes violate the individual privacy to dig information for my story	65	45.77	35	24.65	36	25.35	4	2.82	2	1.41	142	100
I consider separating the private figure from the public figure	63	44.37	33	23.24	31	21.83	9	6.34	6	4.22	142	100



while covering stories which involve people												
I always keep professional journalism practice first to the laws on defamation	60	42.25	40	28.17	30	21.13	7	4.93	5	3.52	142	100
I resist when some of my statements are cut on defamation basis	90	63.38	30	21.13	10	7.04	10	7.04	2	1.41	142	100
I criticize the government officials without fear that I defame them	95	66.90	40	28.17	5	3.52	2	1.41	0	0	142	100
I stop reporting on developing news when there is an imminent threat of taking me to court on defamation basis	2	1.41	5	3.52	3	2.11	30	21.13	102	71.83	142	100
I prefer to report on soft news so that I avoid the risk of defamation case	2	1.41	4	2.82	9	6.34	34	23.94	93	65.49	142	100

Table 12 above shows what the practice of journalists in relation to the defamation laws looks like. It is summarized in one table because it is easy to compare and contrast the responses.

The first item is to check the journalists' practice in pursuing a story without fear of liability on defamation. Those respondents who strongly agree with the item "I refrain from pursuing certain

served his/her prison terms. Accordingly, 5.63% of the respondents strongly disagreed, 21.13% of them disagreed, and 2.82% said they don't know. The majority of them (70.42%) conformed that they either strongly agree (49.29%) or agree (21.13%) to mention the name of the person with the crime he served the sentence for. This practice is in spite of the provision in Criminal code as it would be discussed in the analysis part of this study below. The qualitative data presented above also shows that the journalists were not well oriented on defamation laws before they start their job or no in-service training on defamation (4.2.3).

The fourth question which is pertinent to the practice of journalists was forwarded to see if they sometimes violate the individual privacy to dig information for their story. Consequently, 45.77 % of the respondents strongly disagreed, 24.65% of the journalists disagreed, while 25.35 % of the respondents said they don't know. On the other hand, only 2.82% of them said they agree and 1.41% conformed that they strongly agree. This shows that nearly 70.4% of the journalists refrain from violating the individuals' privacy in the name of digging information for their story.

The fifth question that tests the practice of the journalists in relation to the defamation laws was asked if they agree or not on considering the separation of the private figure from the public figure while covering stories which involve people. 44.37% of the respondents strongly disagreed, 23.24% of them disagreed, while 21.83% of them said they don't know. It was only 6.34% of journalists and 4.22% who agreed and strongly agreed respectively in considering the separation of the private figure from the public figure while covering stories which involve people.

The sixth question in table 12 was to know whether the journalists always keep professional journalism practices first to the laws on defamation. Contrary to the expectation of the

researcher, the majority of the respondents (70.42%) did not give priority to the professional journalism practice as 42.25 % of them strongly disagree, and 28.17 % of them said they disagree that they always keep professional journalism practices first to the laws on defamation. The others, i.e. 21.13 % of the respondents didn't decide which one to give the priority while it was only 4.93 % of them who have agreed and 3.52% who have strongly agreed to give priority to the professional journalism practice rather than the laws. As the latter two groups are insignificant in number when compared with the earlier two, it could show that journalists could be over conscious of the defamation laws. This could be related to their perception of the law as it was seen in the earlier part of data presentation.

In question seven under table 12, the journalists were asked if they resist when some of their statements were cut on defamation basis. The result shows that 63.38% of the respondents strongly disagree, 21.13% disagree, while 7.04 % of them undecided. On the other hand, insignificant number of them i.e 7.04% agree, and 1.41% of them strongly agree. We can see from the responses that a great majority of the respondents (84.51%) do not resist when some of their statements were cut out on defamation basis while only 28.17% of them do to the contrary.

Question eight under the same table requested the journalist to react to: "I criticize the government officials without fear that I defame them". Accordingly, 66.9% of the respondents said they strongly disagree, and 28.17% disagree; while 3.52% are undecided, and 1.41% said they agree. No respondent said they strongly agree. This again shows that the journalists stop short of criticizing the public authority or the government officials as they fear that they defame them.

The result of question nine in table 12 also shows the journalists' response concerning their practice in relation to defamation. They were asked to react on their agreement level on stopping their reporting on developing news when there is an imminent threat of taking them to court on defamation basis. Consequently, 1.41% of the journalists strongly disagreed and 3.52% disagreed. So it is only a very limited number of journalists who said they don't stop reporting on fear of some entity's threat against defamation. The majority of them (92.96%), however, stop reporting on developing news when there is an imminent threat of taking them to court on defamation basis. The figure is 71.83% for strongly agree and 21.13% for agree while 2.11% fell under the undecided group.

The last question in table 12 is about the journalists' reaction to the item that reads, "I prefer to report on soft news so that I avoid the risk of defamation case". Accordingly, only 1.41% of the respondents strongly disagree, and 2.82% disagree. The sum of these two shows us that only 4.23% of the journalists don't divert to soft news to avoid the risk of defamation while 6.34% of them remained undecided. However, the majority of journalists (89.43) prefer to report on soft news to avoid the risk of defamation cases. Out of this figure, 23.94% said they agree, and 65.49% responded saying that they strongly agree.

A question for the participants in the focus group discussion was raised to see the practice of the media in balancing the right and responsibility in relation to defamation in the media products. All the participants agree on the importance of balancing the two. Participant no. 3 gave an explanation:

It is of great importance to control the journalists using the legal instruments.

Journalists could abuse the media power in their hand if they are unlashd. We

can take what happened to the Highland mineral water factory. A certain journalist defamed the company in the name of investigative journalism. He asked the company to give him some money; if didn't, he could reveal some information he had that compromise the reputation of the company. The company didn't agree. The defamatory media report went public. The brand mineral water company went out of the market as a result. This of course happened even if the media laws and the various defamation laws are here. Therefore, we also need the closer follow up from the specific media so that they don't entertain the diversion from journalistic ethics (Participant no. 3).

However, they said there is a tendency among the media of inclining towards claiming media right while ignoring the responsibility. This is mostly a case during the election time. Some of the media base their report on unfounded allegations which lead them to defamatory statements. Yet, they explained, not only the journalists but also the laws need to strike the balance between the responsibility and the right.

The practice of the journalists seems the reflection of their perception. This could be seen from the answer the participants in the focus group discussion gave to the question, "How do you evaluate the perception and the practice of journalism practitioners in relation to the defamation laws" ?

All the participants, except two, reflected that the perception of the journalists towards the defamation laws is not based on knowledge and it is negative; and this reflected on their practice. They said that many of the journalists were deterred more by the unwritten laws and by hearing



the rare court cases. Moreover, their perception emanates from what they heard and read about development journalism.

Those two participants insisted that the perception of journalists towards the defamation laws is positive; hence, their practice is not deterred. They explained that any professional and responsible journalist could not base his/her report on defaming people or anybody; consequently, he/she does not refrain from reporting on bad deeds by anybody. Informant no. 7 forwarded his idea:

If a journalist base his or her story on defamatory statements, he is not may be a journalist rather a politician or he is a bad journalist. It is not the journalists' concern if the law is there or not. The law is for those who do not respect their journalistic ethics in the first place. They need to be maintained. If the journalists respect their own ethics and principles the law is not a worry for them (Informant no. 7).

Generally, except for those two, all participants in the discussion said that the journalists have a negative perception towards defamation laws. Accordingly, they don't even try to understand the laws. They just avoided any thing that leads to defamation, but by avoiding the hard news not by practicing according to the law.

According to the participants in the in-depth interview, the interpretation of development journalism by some of the journalists in the government run media was wrongly shifted to reporting only the success stories. The journalists think that they should focus on reporting a success story so that they can avoid the defamatory statements.

#### 4.2.7 The presentation of legal cases

In an effort to select the defamation cases which appeared in the Federal Courts of Ethiopia since 1999, only four of such cases were found. It has been a tiresome job to access to the specific defamation cases let alone the presentation of the cases in some detail. Accordingly, such cases were accessed from various media sources. The cases were presented in this section of the current chapter, and to be analyzed later in the chapter with findings from other data gathering tools.

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##### Case 1

A verdict was given against Abraham Reta in a federal court in May 2006. He was working for a privately owned newspaper Called *Addis Admas*, a weekly newspaper printed in Amharic. The defamation crime he was accused of was allegedly committed when he was working for *Ruh*, an Amharic Weekly. He was found guilty by the court for libeling three government officials and sentenced for one year imprisonment.

([http://www.addisadmass.com/News/news\\_item.asp?NewsID=384](http://www.addisadmass.com/News/news_item.asp?NewsID=384)).

##### Case 2

Wossenseged Gebre Kidan was accused of fake news against a person called Ato Sekutire Getachew allegedly reporting that he was injured in an explosion in Tigray Hotel in Addis Ababa. The article in which Wossenseged was accused of defaming Ato Sekutire appeared in September 18, 2002 in a privately owned newspaper called *Ethop* for which Wosenseged was an editor-in-chief.

The content of the case was Ato Sokutire editor-in-chief of Abiyotawi Democracy, a governing party paper, was defamed by the newspaper writer. Ato Sokutire appeared before the court as a

witness explaining how the report damaged his reputation, and how it negatively affected his life and the life of his family. He also explained to the court that he asked the newspaper to correct and retract the statements to which the newspaper complied. However, the newspaper after retracting the statement on Sekutire, added in its footnote that the news was true and it was ready to present the evidence upon request from the court. The court, however, sentenced the defendant to a year and four months imprisonment.

### **Case 3**

Tilahun Bekele was an editor of *Fetash*, a weekly newspaper in Amharic. He was accused of defaming arguably the most famous Mineral Water Company in Ethiopia at the time.

The report in the paper alleged the company of being funded by CIA and of using water from polluted water. The editor found out to be motivated to release the defamatory articles after the owner of the Crown Mineral Water Company; Mr. Ermias Amelga refused to bribe him for holding the article as requested by the editor.

The editor asked for 5,000 Birr (which is about USD 250 now and 500 at the time). The owner refused to succumb. The journalist didn't back off; and he Printed the story. The customers took the story seriously and quit the product. The company lost its share of the market and finally went out of the business.

### **Case 4**

Tesehalene Mengesha was an editor in the now defunct Mebruk, an Amharic weekly. He was convicted for defamation and anti-state case happened about seven years ago when he was sentenced to 18 months imprisonment in 2006. The case was about the article written during the



1998-2000 Ethiopian-Eritrean border war. Tesehalene was charged for an article about a person who was reported to be a double agent for Ethiopia and Eriterea during the border war between the two countries over a town called Badime.

**4.3 Discussion of Findings**

Under this subtopic, the data presented above will be discussed and analyzed in cross reference with reviewed literatures in chapter two the theories the study employed, and the experiences of others. The discussion is systematically done under each of the three research questions while touching upon the results from every tool utilized in the study.

**4.3.1 Research question 1: How do journalists perceive, and practice pertinent to the Ethiopian laws on defamation?**

**4.3.1.1 Regarding the journalists’ Perception**

The study found out that the perception of the majority of the journalists towards the defamation laws is negative, and the laws have been serving as a chilling effect on the journalism practice both in the state run and privately owned media. This inference has been drawn from the result of both quantitative and qualitative data presented above.

As it was presented in table 3 above, only 19.7% of the journalists feel that the various defamation laws have a positive contribution towards responsible journalism. To the contrary, a great percentage of them (80.3%) feel that the various Ethiopian defamation laws serve as a chilling effect on the free journalistic practices while 80.98 feel that the laws have an effect on the public’s right to accesses information (table 3). This was still strengthened with their response in table 2 that 92.96% of journalists feel that the law on defamation restricts journalistic

the majority of the respondents (70.42%) did not give priority to the professional journalism practice when defamation is a concern (table 12). They are in fear of legal consequences as the majority of them (92.96%) stop reporting on developing news when there is an imminent threat of taking them to court on defamation basis (table 12). As it was discussed in chapter two of this research, a study by the International Press Institute (IPI) which was conducted in 2014 found out that when the defamation laws are bad laws, and when journalists see their colleagues being affected by those laws they tend to avoid reporting on issues which in any way lead to criticism, or they tend to self-censor. When this is the case, the media's role as public sphere will be in jeopardy. As it was discussed in chapter two of the present research, when the public sphere declined, people would become merely in the receiver's side "dedicating themselves more to passive consumption and private concerns than to issues of the common good and democratic participation." (Kellner, 2012,p.4).

What is more, 97.95% of the journalists conform that they always look for a defamatory statements in their stories (Table 2). The question is why they worry about making sure that there is no any defamatory statement in their story. It could be inferred from the answers that they feel that considering the avoidance of the defamatory statement more related to their over conscience about the defamation laws which could have its own effect in pursuing their duty to search for the truth and tell the truth. This is in spite of the law. As it was discussed in chapter two of this research, Article 2049 of the civil code states that no liability shall be brought against an author of a publication where the defamation is committed without intention of injuring someone and without gross negligence. But still, they didn't want to take the risk or they are not well aware of the law.

As it was already mentioned above, (80.3%) of them perceive that the defamation laws serve as chilling effect. This perception was not supported with their awareness of the laws. This could be understood from their answer to the third question in table 12. The majority of them (70.42%) conformed that they either strongly agree (49.29%) or agree (21.13%) to mention the name of the person with the crime he had already served the sentence for. This practice is in spite of the provision in Criminal code. The Criminal Code of 2004 in article 613(1) states that “Statements made concerning a crime of which a person has been found guilty, has duly served the sentence or has been granted pardon or amnesty, with intent to injure his honour or reputation, shall be considered as defamation and are punishable” with simple imprisonment not exceeding six months, or fine.

Table 12 shows that 70.4% of the journalists refrain from violating the individuals’ privacy in the name of digging information for their story. Still, it could show the consistency with their answer for question number 5 and 6 in table 12 where they unequivocally put that they self-censor for defamatory statements not because it is unprofessional but because they felt that they end up in jail or the statements could be cut out by the editor.

#### **4.3.2 Research question 2: Do the clauses on defamatory actions in the various Ethiopian laws uphold/ not uphold the practice of freedom of speech and of the press?**

There is a concern among many scholars that criminal defamation can have a chilling effect on freedom of expression. The concern is mostly the effect the law has on compelling the journalists to self-censor in order to protect themselves from jail or other punishments. The effect would be grave when and where the meaning of legal clauses is vague and when they are subject to a broad interpretation. What is more, defamation laws could deter the journalists from pursuing the

hard news which involve investigative reporting if the politicians are involved in the court cases or if they are participating in indirect interpretation of the law through the judges. The legal documents have been analyzed below to substantiate the data from primary sources and to answer the second research question; that is, to what extent do the clauses on defamatory actions in the various Ethiopian laws uphold/ not uphold the practice of freedom of speech and of the press?

#### **4.3.2.1 The Constitution**

The 1995 Constitution of the Federal Democratic Republic of Ethiopia has extensively provided clauses which deal with human rights, and vividly stipulates the provisions on freedom of expression. The Ethiopian laws on freedom of expression are in the sphere of international laws. The constitution in its article 9(4) endorses all the international agreements that Ethiopia ratified as the integral part of its law. Accordingly, International Covenant on Civil and Political Rights (ICPR) is part of Ethiopian laws as the country ratified the convention on 11 June 1993. Again, Ethiopia ratified the African Charter on Human and Peoples' Rights on 15 June 1998. Besides, Ethiopia signed the Universal Declaration of Human Rights (UDHR) in 1948 and became one of the 48 signatory states. Article 13(2) of the Ethiopian constitution clearly puts that the principles in the international human rights instruments which Ethiopia adopted could be used in interpreting the fundamental rights and freedoms which was stipulated in the constitution. The contents of the international human rights instruments almost totally endorsed in article 29 of the constitution.

Article 29 of the constitution comprises the right of thought, opinion and expression. Article 29 (1) provides the right "to hold opinion without interference"; Article 29 (2) is about the right to freedom of expression without interference. It provides that the 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 media of his choice”. The freedom of the mass media including the press has been guaranteed under Article 29 (3). Sub article 3 of article 29 specifies the freedom of press to include, “(a) prohibition of any form of censorship. (b) Access to information of public interest. Article 29(4) states that, “the press shall, as an institution, enjoy legal protection to ensure its operational independence”. Article 29(5) gives even the state run media the capacity to entertain the diversity of opinion.

However, as it is the case in the various international laws, some restrictions on these rights are evident in Ethiopian laws to protect the others’ rights including the right not be defamed. After all, there has to be a balance between the right and responsibility. Laws on defamation are one of those laws which balance freedom of expression and the right to reputation.

Laws relating to defamation are designed to protect the reputations of individuals.

The requirement of protecting the reputation and rights of others must be weighed against the individual’s freedom of expression. But it is not simply a choice between two conflicting principles of equal weight. The freedom of expression is the guiding principle, and any exceptions to that fundamental principle must be interpreted narrowly (Jayawickrama, 2002, p.711).

Article 29(6) of the constitution provides that limitations by law “can be laid down in order to protect the well-being of the youth, and the honor and reputation of individuals.” Moreover, the constitution under the same article prohibits “any propaganda for war as well as the public expression of opinion intended to injure human dignity”. Yet, some argue that the constitution put additional and vague provisions in article 29 (6) with phrases such as: “public expression of



opinion intended to injure human dignity”. Article 29(6) also provides that limitations can be laid down in order to protect the well-being of the youth and the honor and reputation of individuals.

Once again, those provisions fail to meet the test of restriction on freedom of expression that they can be necessary in a democratic society. In this regard, “public policy” in article 29/3/ is not defined and clearly presented; hence, it leaves a room for narrow interpretation of internationally recognized rights, and they can potentially be used to justify future laws which may unduly restrict the rights of freedom of speech and pave the way to criminalize defamation in the journalism product.

#### **4.3.2.2 Criminal Law**

Article 613 of the Criminal Code as it has been discussed in chapter two of this research, allows penalties of a fine or up to one year in prison for defamation. Moreover, Article 486(a) of the same puts punishment on anybody who “... starts or spreads false rumors, suspicions or false charges against the Government or the public authorities or their activities, thereby disturbing or inflaming public opinion, or creating a danger of public disturbances ...”. This article can be interpreted broadly to deter journalists from focusing on investigative journalism which in many cases may involve the powerful.

As we can see from the findings from qualitative data above, defamation laws have been felt by journalists to have been used in Ethiopia to aggravate self-censoring. This is especially evident when journalists refrain from pursuing investigative journalism in fear of criminal case against them.

#### **Freedom of the Mass Media and Access to Information Proclamation No. 590/2008**

Defamation laws including that provided in article 43(7) of Proclamation no. 590/2008 could have a chilling effect on media through self-censorship in the part of journalists as it allows prosecution of the mass media for defamation against the legislative, executive or judicial authorities even if those public figures didn't personally forward the claim. If the media is short of confidence to criticize the government body at any level, the role the media could play in watching and reporting the deeds of the corrupt authorities through the investigative journalism could be in jeopardy. This in turn, may affect the media role in professionally serving the public interest. The unnecessarily extended court proceedings could by itself bring a chilling effect on freedom of expression.

This latest version of the media law made some improvements when compared to the previous ones. Article 43(1) prohibits remanding for further investigation. Accordingly, journalists should not stay long in prison before the verdict. However, this law also has a tight grip on journalists. The other article which gives extra power for the government is article 43(7) of the same proclamation. It gives the right to the government to sue journalists on defamation cases standing on behalf of people in different organs of the government. According to article 43(7), dealing with defamatory statements against "constitutionally mandated legislators, executives and judiciaries will be a matter of the government and prosecutable even if the person against whom they were committed chooses not to press charge". This is in a sharp contrast with the 2004 Criminal law which underlines that the defamation case appears in the court only when there is a complaint from the victim.

The compensation for an action of defamation was provided in Proclamation No. 590/2008 article 41(2). The compensation was raised to Birr 100, 000.00 from 1000.00 Birr in the previous proclamation. This could have a shift from the hard news to the soft news where statements are

safer. This fact was substantiated by the data from the primary sources when it shows the great majority of the journalists (92.96%) stop reporting on developing news when there is an imminent threat of taking them to court on defamation basis; where the majority of them (89.43) prefer to report on soft news to avoid the risk of defamation cases; and where the predominant number of journalists (78.2%) refrain from pursuing some stories in fear of liability under certain provisions on defamation.

Refraining is not the answer; they rather should know the concerned provisions and act responsibly. Serving as the public sphere is not the role to be left simply because a certain media law puts restrictions. The data, however, reflect the decline in the media side from playing its role as public sphere. As it was discussed in chapter two, when “the public sphere declined, citizens became consumers, dedicating themselves more to passive consumption and private concerns than to issues of the common good and democratic participation.” (Kellner, 2012,p.4).

#### **4.3.3 Research question 3: How do the various defamation laws being applied in the selected court cases in relation to the media freedom as stipulated in the Ethiopian Constitution and the pertinent Proclamations, and other International legal instruments?**

It is apparent that two rights are put in the balance of justice when the defamation case is presented for a verdict. The first is the right to freedom of expression while the second is the right to reputation. The court must see an injury to reputation when it gives verdict on the defamation case. The injury should be appreciable. This could be open for a debate as what is an appreciable lie in the eyes of the judge. According to McEwen ( 2014, p. 2), laws on defamation“ serve as a chilling effect on freedom of expression in that they sanction, or threat to sanction,



speech”. The judges in any court take this seemingly difficult trajectory into consideration when making verdict on defamation cases.

The courts are supposed to consider any defamatory statement in context so that the freedom of expression would be upheld. The freedom of expression is not only for journalists to access information and report it, it is also pertinent to the right of the people to be informed on the matters that affect their life and to have a forum (Mendel, 2005, cited in Dunu and Ugbo, 2014). This shoulders even a greater responsibility on journalists. The responsibility of journalists could be better served when the laws and the interpretation of the laws help not hurt the journalism practices.

The problem comes when courts are allowing claimants to point to a particular sentence in isolation, without examining the statement in its whole context. The claimant in a claim for defamation needs to show that the words in the statement referred to him/her. This is not a problem when the defendant names the claimant in the statement, but difficulties arise, when the statement is general. Where the statement is general, the claimant will not be able to bring a claim for defamation unless he/she can show that it relates to him/her specifically.

Also, journalists did not raise Qualified Privilege as a defense for them. Qualified privilege – is in fact weaker than absolute privilege, and will only apply on occasions where it is desirable that freedom of speech should be protected, but not when the maker of the statement is activated by malice.

The other problem of the court’s action is that they disregard the principal value of human right which is freedom of speech and freedom of expression when they deal with cases of defamation

by giving more weight to defamation. It could also unnecessarily deter the media from serving as a public sphere through the chilling effect it serves.

The journalists are not raising qualified privilege as defense may be because of a fear that courts may reject any general head of qualified privilege. But there are some guidance: The seriousness of the allegation – the more serious the charge, the more the public is misinformed, and the individual harmed, if the allegation is not true; the nature of the information – is it a matter of public concern or not, its source, what steps had been taken to verify the information, the status of the information, that is how reliable is the report, the urgency of the matter, whether comment is sought from the claimant, the tone of the article, whether the gist of the claimant's side of the story has been told, and the general circumstances and timing of the publication among others.

Moreover, even if the constitution confirms that International covenants ratified by the country are part of Ethiopia's' law, the standards for protecting freedom of expression set out in international and regional human rights law are often not considered in court practices including defamation cases review. There is still a question as to how can these standards be applied at the national level? Will a civil or criminal court simply ignore any argument based upon these standards?

## **Chapter Five**

### **Conclusion and Recommendations**

The present research aimed to examine the Ethiopian defamation laws, and the perception and action of the journalists towards the laws. To achieve this objective, the study sought to find answers to the three questions it has raised: How do journalists perceive and practice in pertinent to the Ethiopian laws on defamation? To what extent do the clauses on defamatory actions in the various Ethiopian laws uphold/ not uphold the practice of freedom of speech and of the press? How do the selected court cases on defamation violate/not violate the media freedom as stipulated in the Ethiopian Constitution, pertinent Proclamations and other International legal instruments?

The study applied both the qualitative and quantitative methods of data gathering; and those data gathered through such method were analyzed in descriptive and thematic analysis method. The research saw the questions it raised through the lenses of the theories such as social responsibility of the media and the Public Sphere. Consequently, the conclusions drawn from the analysis of the findings and the recommendations based on those findings were the concern of this last chapter.

#### **5.1 Conclusion**

Journalists need to go beyond the surface of the event to investigate the matters and show what the truth behind the flowery event holds. It is in the interest of the people for the media to report what they don't see on the surface, what the powerful in the public office or in business have accomplished to the benefit of the country and what they didn't. It demands a journalist who knows what his/her rights, duties and responsibilities are to accomplish such professional task.

On the other hand, there are laws which are supposed to put a balance between rights and responsibilities in every activity of citizens. Journalism is no exception. In Ethiopian case, there are laws which are promulgated to give recognition to the freedom of speech and the press as well as access to information. On the other hand, there are laws which deter crimes. The Criminal laws are meant to deter crime not to curb rights. However, the various defamation laws are seen to serve a chilling effect on media.

The findings of the research showed that journalists have a negative perception of the defamation laws. This perception is the result of lack of awareness on the various defamation laws of the country and the international laws of which the country is the signatory. Moreover, the criminal defamatory laws and the verdict based on those laws contributed for the negative perception for those laws. In addition, this negative perception had a negative consequence in journalism practice which resulted in less interest in pursuing investigative journalism especially on matters which involve public figures.

Journalists found out to be refraining from involving in hard news with preference to divert to the safe soft news. This is partly the result of the chilling effect of defamation laws and partly the result of lack of awareness on the various defamation laws.

The various defamation laws which were derived from the constitution uphold the freedom of expression as stipulated in the constitution. Yet, it didn't help the journalists to stop short of self-censoring. In some cases, like in article 43(7) of Freedom of the Mass Media and Access to Information Proclamation No. 590/2008 the law negatively deter the journalists as it allows prosecution of the mass media for defamation against the legislative, executive or judicial

authorities even if those public figures didn't personally forward the claim. Moreover, going beyond civil defamation and making criminal defamation as part of the law involve penalties by fine or up to one year in prison as it is stipulated in Article 613 of the Criminal Code. Moreover, Article 486(a) of the same proclamation which stresses on the spread of "false rumors, suspicions or false charges against the Government or the public authorities or their activities" is susceptible for broad definition. This deterred journalists from pursuing investigative journalism.

Laws on freedom of expression are as important as laws on defamation. Laws on defamation need to strike a balance with freedom of expression. In the same token, the media could be concerned not to violate the reputation of others while exercising its rights if there are laws which bind them. But it still serves the purpose while upholding the freedom of expression to include the defamation laws only in civil cases.

Generally, it was revealed in the study that:

- Journalists' perception towards the various defamation laws of Ethiopia is negative.
- In spite of the fact that the laws on defamation are long aged both internationally and nationally, the Journalists' adherence to the various defamation laws of the country is low.
- Journalists are ignorant of the content of the various defamation laws of Ethiopia.
- The media companies don't give the appropriate trainings on defamation laws.
- Those who have the awareness of the laws are negligent of the law.
- The laws on defamation serve a chilling effect on journalism.
- Many defamation cases of the court have a deterrent factor to the extent of self-censoring.

## 5.2 Recommendations

It is a common knowledge that a person who knows his/her rights will defend his/her rights better. The journalists need to know what is included and what is not included under defamation. They need to be updated with the laws that govern the freedom of expression and the defamation laws better than the ordinary people. This helps them not to unnecessarily be deterred from exercising their right in a professional way. Hence, it is important that journalists should self-teach themselves on the various defamation laws both in the national and international legal system. Moreover, it is imperative for the media institutions to update the journalists under their sphere of management on the various international and national defamation laws in comparison with the freedom of expressions. This could be done through in-service trainings, through experience sharing with the media which displayed the best practice.

The media company also need to be careful while recruiting journalists so that they could employ someone who understands and acts according to the expected professional and ethical standards. Whenever the need arises to employ professionals from the fields other than journalism, proper and professional trainings on journalism should be given to those in need.

The law interpreters also need to consider the effect their verdict could bring on the right of the people to know. This right could be protected when the media and journalists were best protected by the court. The journalists need to have at least a confidence on the court to uphold their right.

The research does not infer a bold conclusion of repealing and replacing all defamation laws of the country as some of them are good. It is apparent that good defamation laws which strike a



balance between freedom of expression and the right to genuine reputation should be in place for the benefit of the society. It is for the benefit of the people that the law should support the proper functioning of the media. Hence, criminalizing defamation in the media text need to be watered down so that the chilling effect of the laws on the journalism practice would be avoided or mitigated to motivate journalists to revive the investigative journalism and quit the fashion of concentrating on entertainment which is spreading in a significant number.

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## **Appendices**

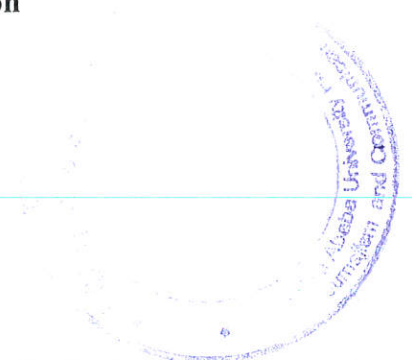
### **Appendix I—Questionnaire**

**Addis Ababa University**

**School of Journalism and Communication**

**Postgraduate Division**

**Research Questionnaire**



Dear Respondents,

The aim of this questionnaire is to collect data for my MA thesis in journalism and Communication at Addis Ababa University School of Journalism and Communication. The topic of the study is “*Ethiopian Defamation Laws and Journalists’ Perception and Practices Pertinent to the Laws*”. Hence, the purpose of this questionnaire is to assess the perception and practice of the journalists pertinent to the various defamation laws.

It is only if you provide the genuine answers to all the questions in this questionnaire that the result of the study is reliable and of use. Hence, you are kindly asked to provide honest and true answers. I guarantee you that all the response you give to the questions in this questionnaire will remain anonymous and confidential, and will be used only for the research purpose.

I would appreciate:

- if you don’t write your name
- respond to all the questions
- return the questionnaire in two days’ time

I thank you for all your understanding and help!

## Part I: General Information

**Instruction: Please answer by putting the √ sign in front of your choice.**

1. Gender

☐ Male

☐ Female

2. Age

☐ 30 and under

☐ 31- 40

☐ 41 – 50

☐ 51 and above

3. Educational level

☐ Certificate/TVET

☐ College diploma

☐ First degree

☐ Second degree and above

4. Field of study

☐ Journalism

☐ Language and literature

☐ Social science

☐ Natural Science

If other, please specify \_\_\_\_\_.

5. Experience in journalism

- ☐ Less than 1 year
- ☐ 1 to 10 years
- ☐ 10 to 20 years
- ☐ More than 20 years

**Part II: Specific Information**

**2.1 Themes measuring perception**

**Direction: Please answer by putting the √ sign in front of your choice.**

1. I feel that the various clauses dealing with defamation in Ethiopian laws have: .....  
( you can choose more than one answer)

- ☐ a positive contribution towards responsible journalism
- ☐ a chilling effect on the free journalistic practice
- ☐ a negative effect on the public’s right to access information

2. Do you think that journalists, you are included, should be oriented on defamation laws of the country before they start their job?

- ☐ Yes
- ☐ No
- ☐ I don’t know

3. Have you ever, by any means, taken training on defamation laws?

- ☐ Yes
- ☐ No

4. Do you think the defamation laws protect the reputation of the person covered in the media more than the right of the people to information about the public figures?

☐ Yes

☐ No

☐ I don't know

5. I feel that I should self-censor for the defamatory statements in my news report in any form because if I don't, ( you can choose more than one answer)

☐ The editor could cut it out any way

☐ I could end up in jail

☐ It would be unprofessional

☐ It is against the law

6. Have you ever thought you will be held accountable for a defamatory statement in your story?

☐ Yes

☐ No

☐ I don't know

7. Under which category defamation should be treated in the law?

☐ Criminal case

☐ Civil Case

☐ In both Criminal and Civil Case

☐ Under none of the cases

8. Do you feel that if you report about wrong deeds of a certain public figure or organization, they sue you on defamation cases?

☐ Yes

☐ No

☐ I don't know

	terms					
4	I sometimes violet the individual privacy to dig information for my story					
5	I consider separating the private figure from the public figure while covering stories which involve people					
6	I always keep professional journalism practice first to the laws on defamation					
7	I resist when some of my statements are cut on defamation basis					
8	I criticize the government officials without fear that I defame them					
9	I stop reporting on developing news when there is an imminent threat of taking me to court on defamation basis					
10	I prefer to report on soft news so that I avoid the risk of defamation case					

## **Appendix II— Interview Guide**

**Addis Ababa University**

**School of Journalism and Communication**

**Postgraduate Division**

**Research Interview Guide**

The purpose of the in-depth interview is to gather qualitative data from people in the journalism field so that the perception and practice of the journalists towards the various Ethiopian defamation laws could be analyzed better. Moreover, in so doing the data gathered through quantitative method will be substantiated.

1. What does journalists' practice in relation to defamation laws look like?
2. Do you think that the various Ethiopian defamation laws have a chilling effect on the journalists' practice?
3. What do you think should the media do in relation to avoiding defamatory statements in the media products of any sort?
4. Do you think that the defamation cases in the court had an effect on journalism practices in Ethiopia?
5. How do you think should the law treat defamation?



## **Appendix III— Focus Group Discussion Guide**

**Addis Ababa University**

**School of Journalism and Communication**

**Postgraduate Division**

### **Research Focus Group Discussion Guide**

The purpose of this Focus Group Discussion is to gather the detailed qualitative data on defamation laws and its effect on the practice of journalists from the expertise in the field of media and media law.

1. How do you evaluate the Ethiopian defamation laws in relation to the freedom of Expression?
2. Do you think that the various Ethiopian defamation laws have a chilling effect on journalism practice?
3. How do you evaluate the perception and the practice of journalism practitioners in relation to the defamation laws?
4. Do you think the Ethiopian media balance their right and responsibility in relation to defamation in the media products?