Wachemo University

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‘A CRITICAL APPRAISAL OF THE LEGAL FRAMEWORK GOVERNING DOMESTIC VIOLENCE AGAINST WOMEN IN ETHIOPIA WITH A PARTICULAR FOCUS ON MARITAL RAPE’

A THESIS PAPER SUBMITTED TO WACHEMO UNIVERSITY SCHOOL OF LAW FOR THE PARTIAL FULFILLMENT OF THE REQUIREMENT OF BACHELOR DEGREE IN LAW (LL.B)

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DECLARATION

I hereby declare that this senior essay entitled “A Critical Appraisal of the Legal Framework Governing Domestic Violence Against Women in Ethiopia with a particular focus on Marital Rape”, which, I am submitted for award of degree of bachelor of laws (LLB) is my original research work carried under the guidance of Instructor Temesgen Abebe and a source of material used in this research has been duly acknowledged.

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ACRONYMS AND ABBREVIATIONS

CEDAW Convention on the Elimination of all forms of Discrimination Against Women

CRC Convention on Right Children

DEVAW Declaration on Violence against Women

EWLA Ethiopian Women Lawyers Association

FDRE Federal Democratic Republic of Ethiopia

ICCPR International covenant on civil and political rights

ICESCR International covenant on Economic, Social and Cultural rights

UDHR Universal Declaration on Human rights

WHO World Health Organization

ABSTRACT

Violence against women is of a serious concern that is perpetrated by private individuals, particular society or communities as well as by state via its agents. It ultimately results in violation of the fundamental human rights of women. Violence against women expresses itself in different forms including rape. A rape committed outside wedlock as a form of violence against women has given legal attention through criminalization since long time ago in Ethiopia. This research after conducting a critical appraisal of the legal framework governing domestic violence against women in Ethiopia with a particular focus on marital rape, has revealed that there is a legal lacuna in spite of the fact that rape is rape by whomever it is committed. The researcher has used a qualitative method of study, in addition interviewing victim individuals in the study area. Thus, to address the issue of marital rape through express criminalization as well as a practical follow up and protection are the minimum steps that must be taken as marital rape is one of the egregious human right violation.

KEY TERMS:

Women**,**

Violence against Women,

Marital rape,

Legal framework,

Human rights,

State responsibility,

Enforcement deficit.

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CHAPTER ONE

1. BACKGROUND TO THE STUDY

A rape of a married woman by her husband is not a transgression of law at all as it mostly accepted that a man is allowed to treat his chattel as he think appropriate" thus, women who were forced to have sex in their marriage did not even have the option of seeking criminal prosecution[1].

The first time marital rape case in the human life history was the one which reach the US Court System that took place in 1978 in New Jersey, when Daniel Morrison was found guilty of raping his estranged wife.[2] The second marital rape was charged Six months later, in Oregon, John Ride out became another husband charged with rape while living with his wife.[3] Ride out was acquitted and brought attention to the concept that rape can exist within the Context of marriage**.**

Many states including Minnesota at that time defended as forced sexual intercourse that committed by a man against his wife is not a crime and as it is a crime only when the person forced non spousal women. And also cases were charged to win, primary because the question of consent is clouded by societal beliefs about marriage.[4] Accordingly, many has defended for the exemption of marital rape from being recognized as a crime. The defense came under the assertion that a husband and a wife acted in consent and the wife had no separate rights apart from her husband.[5] The husband is legally responsible for his wife's conduct. Sir William Blackstone expounded up on the English common law notion that, "by marriage, the husband and wife are one person in law, i.e. the very being or legal existence is that the woman is suspended during the marriage or at least incorporated and consolidated in to that of the

[1] Morgan Lee, marital rape problem,(2oo7),p.34.
[2] Ibid
[3] Ibid
[4] Ibid
[5]5 Ibid

husband. This is the doctrine which gives coverage of husband's physical and legal control over their wives.[6] The first justifications for the marital rape exemption is that; a husband would be unlikely to go to court on behalf of his wife to allege he had raped his wife.

The second justification for the marital rape exemption is that the court and police were often reluctant to penetrate the veil of privacy regarding sexual matters as they are seen at the heart of marital and familiar relations. The law did not reach domestic violence largely because it occurred in the private sphere of the spouses. The criminal law of Ethiopia falls short of outlawing marital rape maintaining the institution of marriage as a defense for rape. Although rape is outlawed in most legal system, sexual intercourse in marriage, including that which is not consensual is often not proscribed. By failing to recognize marital rape, most system implicitly deny a wife the right to refuse sexual intercourse. The committee on Convention on the Elimination of Discrimination against Women (CEDAW) has recommended Ethiopia on several occasions to reconsider about Ethiopia's failure to criminalize marital rape.

Theorizing marital rape as sex discrimination causes of marital rape, the destiny reached at and results achieved by committing the act has been argued over. Following this, various theories on marital rapes have been adopted. These existing theories have their own views on demonstrating the historical contributions that set the solid ground for acts such as marital rape and go beyond the scene to show that marital rape is more than a mere sexual act. They argue that marital rape is a result of the male dominated society, which impairs the equality of women with men; hence, is gender discrimination. There are two major theories on marital rape namely; feminist theory and sex-role socialization[7]. These theories will be discussed to explain marital rape and its history of social and legal

[66] Ibid
[7] Elaine K. martin, Casey T. Taft, Patricia A. Erick, A review of marital rape,(2006),p.332.

acceptance together with the analysis given to explain marital rape as sex discrimination and violation of other corresponding rights.

The right to privacy is an argument that has been advanced both on behalf of the husband rapist and the wife-victim. Many claim that the constitutional right of the husband 'marital privacy is violated when interference is made with the guise of marital rape whereas those that support the recognition of marital rape as a crime state that marital rape is the violation of the individual right to privacy of the wife hen we speak of human rights today, we generally
mean rights as they are enshrined in the bill of rights. The first international instrument to be universally applicable to all human kind is the Universal Declaration of Human Rights (UDHR).[8] The declaration essentially recognizes the inherent dignity and of the equal and inalienable rights of all members of the human family as a foundation of freedom, justice and peace in the world. UDHR recognizes that all human beings are born free, equal in dignity and rights. The act of marital rape is inherently degrading and is the result of the unequal treatment given to women and men and hence is the violation of this specific recognition UDHR and ICCPR, ICESCR declares that marriage must be entered into with the free consent of the intending spouses. Moreover, it is stated that the state parties to the present covenant recognize the right of every one to the enjoyment of the highest attainable standard of physical and mental health. Marital rape causes short term as well as long term physical and mental damage. It is very difficult for victims of marital rape to recover from the incident of marital rape. As the perpetrator is a close acquaintance, recovering is a hard and long process.

Rape survivors always blame themselves for the incidents of marital rape and are in constant feelings of fear, depression and anger. The other psychological problem victims' face is loss of control over their own life.

[8]UDHR,(1948),Art.1

Marital rape also has health consequences such as unwanted pregnancy, physical damage and sexually transmitted diseases; hence, is a clear violation of ICESCR. The other international instrument that was mainly adopted to deal with the rights of women and to eliminate any sort of discrimination is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1981 and additional protocol,1999.

FDRE constitution recognizes multiple rights that protect the human being. At the preamble discrimination on the basis of sex is prohibited.[9] Chapter three of the constitution is specifically devoted to fundamental rights and freedoms[10]. Criminal Code of the Federal Democratic Republic of Ethiopia of 2004 is where marital rape was highly expected to have coverage. However, the code defines rape as ever compels a woman to submit to sexual intercourse outside of wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance is punishable with rigorous imprisonment from five years to fifteen years.[11] Hence, the criminal code only recognizes a rape that is committed outside of wedlock, which clearly shows that rape that is committed within marriage is excluded from legal coverage. The option women victims of marital rape have criminal code is to resort to Art.622 where the act involves violence or grave intimidation and compulsion to perform sex to use Art.568 where the incident result in sexually transmitted diseases including HIV/AIDS.[12]

1.1Statement of the Problem

Marital rape was a deeply rooted social problem that affects the honor, dignity, and equality of women in many parts of the world specially in developing continent like Africa. Even though marital rape is highly prevalent, it is not recognized as a crime and is considered as an

[9] The FDRE constitution, Art.35
[10] Ibid, Art.13(2)
[11] The Criminal Law,(2004), Art. 620.
[12] Ibid ,Art.622

incident that can happen between spouses which is tolerable. Hence, marital rape has received a relatively a little attention from the society as a whole and through legal frame work in a particular.

A survey conducted by Ethiopian Women Lawyers Association (EWLA) showed that out of 208 women that were surveyed 31 women were victims of marital rape, whereas10.8 per cent reported that they were insulted when they refused sex.[13] The rest 5.4 per cent were raped when they refused sex and 1.4 per cent were also beaten when they refused forced sex. Another survey which was conducted by World Health Organization (WHO) shows that out of 3000 women surveyed in Ethiopia in order to measure sexual violence, 59 per cent of women questioned answered that they had faced sexual violence from an intimate partner.[14]

The above indicated data outputs show that marital rape is highly prevalent in Ethiopia. Moreover as study conducted by Scientists shows there is a relationship between increased HIV risk and forced sexual intercourse.[15] Most notably this is the result of women's inability to use barrier contraceptives because of their partners' threats or refusal to use condoms. The same study found that 20per cent of the women who had been raped by their partners experienced miscarriages or still births. Marital rape has a short term effect of anxiety, shock, intense fear, depression, suicidal ideation, disordered sleeping and post-traumatic stress disorder. Marital rape also has long term effect of disordered eating, sleep problems, depression, sexual distress, and problems establishing trusting relationships, distorted body image and increased negative feelings about themselves.

Marital rape rips off the dignity of women and their bodily integrity is violated when they are coerced for sexual intercourse. The act is degrading

[13] Ibid P46.
[14] Morgan Lee, marital rape a unique problem,(2007),p.41.
[15] Ibid

and women are subjected to humiliation; however, this is not well understood by the society. Societal beliefs and misconception contributing to the tolerance of marital rape, sexism is at the heart of marital rape, just as it is at the heart of most forms of sexual violence.

The widespread idea about marital rape is that husbands have a right to sex and have the right to use their wives' body for this purpose makes it difficult for the society to recognize sexual coercion in marriage as a crime.

The violent nature of marital rape is not acknowledged, which is often extremely brutal and degrading and may be connected with a pattern of other violent physical abuses. There are different barriers for the recognition of the marital rape under various situations to be considered as a crime when an individual husband commit on woman. Therefore, first barrier to prevent marital rape is that; women do not find help in such violent sexual relationships though such act is extremely brutal and degrading. The other barrier to prevent marital rape is that marital rape is not recognized as a crime in the country.

Though rape has been recognized as a crime under the Criminal Code of Ethiopia.[16] but a rape that happens in wedlock has been explicitly exempted. This definitely results in violation of the definitions given under international instruments such as Declaration on Violence Against Women (DEVAW) and Convention on the Elimination of Discrimination Against Women (CEDAW) under Art.1,2 and 2(2(g and f) respectively to which Ethiopia is a party because it fails to recognize marital rape as an act that results in physical, sexual or psychological harm or suffering to the wife and criminalize it.[17] The provision of criminal code of Ethiopia simply ignores marital rape because it happens behind closed doors; hence, the law fails to accord protection to victims of rape within the spousal relationship, which

[16]Criminal law/(2004) Art,620
[17]CEDAW,(1981),Art. 2(f), Ibid, Art, 2(g).

results to be the main reason for under reporting of marital rape cases as well as convictions. The fact that marital rape does not have coverage in the criminal justice system sends a message that the state is unwilling to intervene or prevent the act.

The last obstacle to preventing marital rape is that legal institutions are not willing to interfere with the guise of family privacy and when some are willing to, the fact that there is no law that governs marital rape makes it hard to prosecute and punish criminally. Thus, in spite of the fact marital rape is a prevalent problem that most married women face in their daily lives, but an incident has not got the necessary social, legal or institutional recognition as crime.

1.2 Objectives of the study

1.2.1General objectives

The General Objective of this study is to critically examine and analyze the legal frame that governs marital rape in Ethiopia, to identify and legal gaps and thereby to suggest possible solution that has to be taken to address the problem properly.

1.2.2 Specific objectives

This research seeks to address the following specific objectives:

- To examine gaps in the law that are meant to govern Domestic violence in Ethiopia with a particular focus on to marital rape;
- To show a possible relationship between marital rape and fundamental human rights violation;
- To identify factors that hinder the effective prevention of marital rape;

1.3 Research Questions

This research aims to answer the following three research questions:

- Does the Ethiopian Criminal law properly address the issue of marital rape?
- How does the nexus between marital rape and fundamental human rights look like?
- What are the practical challenges that hinder the prevention of marital rape?

1.4 Research Methodology

This researcher intends to uses a qualitative method of study. In the course of conducting this research, literatures such as journals, articles, scholarly books, unpublished as well as official documents, and laws is reviewed and analyzed. In addition, a case study by way of interviewing victim individuals is conducted. Moreover, the researcher's personal observation has employed to get detailed answers to the problem. For this purpose, the researcher has planned to go to institutions such as the Tembaro Woreda first instance court and a free legal aid center located in the premises of Kembata Tembaro zone High Court. To gain systematic, reliable and valid knowledge the researcher has take equal proportion of participants, from both institutions. Website information is also employed to gather updated information on the area.

1.5 Scope of the study

It can easily be grasped that the depth of the area of the study is hard to limit. The issues are vast and the problems can be expanded tremendously. However, this study limited to assess the legal , practical as well as institutional barriers that impede the effective prevention of marital rape. Moreover, the possible measures that need to be taken to minimize or avoid the problem is addressed as the way forward.

1.6 Limitation of the study

The research title is concerned with a highly contemporary and multidisciplinary and hence requires going through in detail and carefully

by referring relevant international, regional and national legal and policy documents as well as seeing level of practical impact of the conduct on the life of women and thereby to properly pinpoint the available challenges and to suggest possible solutions. Thus, in course of budget to dig out the problem, unwillingness of the respondent for my questionnaires, there may be the time constraint and the unavailability of the resource on the issue.

1.7 Significance of the study

This research was raise awareness about marital rape, its current status, and its effects to readers. It will also give insight to parties that marital rape should be taken seriously and measures must immediately be taken to reduce the act. There have not been adequate researches conducted on the area to the best of the writer’s knowledge; therefore, this research is give adequate information to other who may need information. Furthermore, this research could be used as a source for other researcher's to conduct a research on the area.

1.8 Organization of the study

The entire paper is divided in to five chapters. Chapter one of the study deals with introduction of the study. Chapter two deals with theoretical concept of marital rape. Chapter three deal with legal analysis on marital rape. Chapter four deal with Results and Analysis of the study. The final Chapter is the conclusion and recommendations

CHAPTER TWO

2. CONCEPTUAL FRAME WORK OF MARITAL RAPE

Tracing back history, men who rape their wives have been exempted from legal Punishment.[18]Marital rape exemption found its roots in 17th c English common Law with Sir William Hale, an English chief justice. It was Sir William Hale that laid foundation for the Marital rape exemption with a statement that: “the husband cannot be guilty of a rape Committed by himself up on his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her hand, which she cannot Retract.[19]”It was therefore this statement that set a precedent in English law that was carried over to the English colonies of North America. This

[18] Elaine k. martin, caseyT.Taft, patriciaA.Resick,A review of marital rape,(2006), p.331.
[19] Ibid

statement known as the Hale Doctrine essentially declared that we cannot talk about rape in marriage as there was irrevocable consent given by the wives at the time of marriage. Hence, this notion was officially accepted into the American legal system in 1857 under the common wealth Vs. Forty decision. In similar fashion with the Hale doctrine, the "unities theory" was Developed by Blackstone, which theorized that at the time of conclusion of marriage, man and wife become one entity and that "the legal existence of the wife is suspended during marriage". This concept grew in to an assertion that rape was a commission of a crime against the property of a husband, which in effect implied that the notion of marital rape could not exist since stealing one's own property was a "legal impossibility.

Therefore, the conception of marital rape as a crime was ignored, undermined and disregarded from being recognized socially and legally. However, in the 1970s the issue of marital rape was scrutinized and emphasized by the feminist movement that alleged the issue of marital rape was not a legal impossibility rather a burning issue that needs social as well as legal recognition as a crime. Laura X was a particularly influential woman in this regard who publicized the murder trial of Judy Hart Well that broke the precedent of irrevocable consent by allowing women 'to forcibly resist unwanted sexual contact by their husbands'. The notion of irrevocable consent is one of the elements that played roll in perpetuating marital rape in human history; with this regard, Morgan Contends that any argument which is based in irrevocable consent is simply untenable and alleges that: "rape is not simply a sexual act to which one party does not consent but a degrading, violent act, which violates the bodily integrity of the victim and frequently causes severe, long-lasting physical and psychic harm." Hence, "to ever imply consent to such an act is irrational land absurd.[20]" Underpinning this and similar other arguments, not criminalizing marital rape became impossible in legal systems such as USA. Accordingly, the federal government of the United States of America

[20] Morgan Lee, marital rape a unique problem,(2007),p.34.

with its 50 states currently sanctions marital rape through a legislated law.[21]

2.1 Current status of Marital Rape

In 1945 feminists succeeded in having the equal rights of men and women written in to the United Nations charter and in establishing the commission of the status of women.[22]it was in the 1970's that the woman's movement raised the sensitivity of women and society to crimes committed against women such as sexual assault and physical assault by their husbands. These mentioned crimes have remained the most under reported and unrecognized crimes against women in the criminal justice system.[23]

2.2 Categories of Marital Rape

The nature and form in which marital rape is committed can be categorized in to two; such as non-physical sexual coercion and threatened (forced) sex. The following gives a brief description of these categories.

2.2.1 Non-Physical Sexual Coercion

Victims of marital rape are subjected to different forms of marital rape. One of these forms is non-physical sexual coercion. Perpetrators of non-physical sexual coercion often use different tactics to make their victims submit to sexual acts. Non-physical sexual Coercion has two types; that is normative (social) coercion and interpersonal coercion. Social Coercion invokes the belief in 'wifely duty' that is, it is the wife's duty to satisfy her husband even if she finds the act undesirable. There is a socially structured system that preaches and perpetuates that a wife's role in the house is to submit to her husband and submit in sexually is regarded as one of the major obligations even if the act imposed is undesired by the wife at the moment. The other form of nonphysical sexual coercion is interpersonal

[21] Elaine K. Martin, Casey T. Taft, Patricia Airsick, A review of marital rape,(2006),p.331.
[22] Michael Freeman, Human Rights,(2002),p.127.
[23] Richard J.Gelles, Power, sex and violence-the case of marital rape,(1977),p.339.

coercion. Interpersonal coercion is a form of coercion that occurs when a husband uses his power or resources to force his wife in to his sexual demands.[24]

2.2.2 .Threatened or Forced Sex

Forced sex in marriage is categorized in to three; such as battering rape, force only rape and obsessive rape.

2.2.2.1 Battering Rape

Among the categories of forced sex, battering rape was the most common form of marital rape.[25] Marriages that experienced battering rape were characterized by verbal and physical abuse. In these cases, marital rape was an extension of general violence in the relationship and was not provoked by sexual conflict.

2.2.2.2 Force only Rape

Force only rape was the second most common form of marital rape.[26] Marriages that
suffer from force-only rape are marriages that mostly suffer from continuous disagreements over matters of sexual activities.[27] The second category of rape, “power rape” falls under the heading of force only rape.[28] Power rape occurs when a “perpetrator uses rape to assert power, dominance and control over the victim.”[29] Instrumental violence and violence used to achieve a desired act is a characteristic of power and force only rapes.

2.2.2.3 Obsessive Rape

[24] Elaine K. Martin, Casey T. Taft, Patricia A. Erick, A review of marital rape,(2006),p.334.
[25] Ibid
[26] David Finke hoar and Kerstin, License to rape: sexual abuse of wives,(1985.).
[27] Ibid
[28] Ibid
[29] Ibid

Obsessive rape was the least common form of marital rape.[30] Unusual sexual activities such as bondages and the use of reenactment of pornography were the characters of marriages with obsessive rape. Perpetrators of obsessive rapes are generally occupied with sex and experienced sexual arousal from perverse acts or pain inflicted on the victim.[31]

2.3 Theories and Rationales behind the Justification for Marital Rape Exemption.

After the declaration of Hale that rape cannot exist in marriage, the marital rape exemption was again supported by the unities theory in the 8th c. Black Stone put forth the unities theory which stated that at the time of marriage a husband and a wife becomes one.[32] The unities theory does not recognize the wife as a separate being capable of raped.

The theory contends that the being of a woman is incorporated in to that of the husband which suspends the legal existence of the woman.[33] Therefore, according to this theory rape in marriage was impossible as one could not rape himself. The unities theory makes women lose their own civil identities in marriage since their rights would be integrated with their husbands.[34] In black stone's commentary on the laws of England, he wrote as "husband and wife are legally one person" and the legal existence of a woman is suspended during marriage and incorporated in to that of the husband.[35] The other theory that justified the spousal exemption was the property theory. According to this theory, a woman becomes the property or chattel of her husband at the time of conclusion of marriage.[36]

[30] Ibid
[31] Elaine K. Martin, Casey T. Taft, Patricia A. Erick, A review of marital rape,(2006),p.33.
[32] Criminalizing marital rape: a comparison of judicial and legislative approaches, (2006),p.483.
[33] Jennifer A.Bennie and Patricia Airsick, Marital rape history, research and practice, (2003),p.229.
[34] Jennifer A.Bernice and Patricia A. Erick, marital rape history, research and practice, (2003),p. 229.
[35] Ibid
[36] Criminalizing marital rape: a comparison of judicial and legislative approaches, (2006),p.483.

Hence, rape of one's wife was considered as a crime committed against the property of the husband. However, it was impossible for rape to exist in marriage since it was a legal impossibility for one to steal his property. Hence, marital rape as a violation of women's rights and a violation of their bodily integrity as well as a violation of individual privacy was unrecognized.[37]

On the same fashion, the separate spheres theory further eradicated women's civil identity. Under this theory, men were considered to'' inhabit the political/public sphere where as women were already considered the property of their husbands".

According to this theory, it was the role of the husband to control the dynamics of politics and be engaged in public activities whereas the role of the wife was to serve her husband at home since she was simply a property.[38]

Besides the theories that justify spousal exemption, the rationale behind permanent consent alleges that the woman has given irrevocable consent at the time of marriage and because of this marital rape cannot exist in marriage. However, it is unrealistic to assume that modern women give unqualified consent to sexual relations with their husbands during marriage. If the marriage has already deteriorated to the point where intercourse must be commanded at the price of violence, it is doubtful that there is anything left to reconcile.

Therefore, women should rebel against tyranny and oppression by their husbands, society and the legal system. The human rights should be protected by the rule of law and justice should be easily reached to give them harmony.[39] Further, an analogy can be drawn between punishing marital rape and incest. If we are prepared to argue that the state should not meddle in family matters, we must ask ourselves, if we are ready to

[37] Jennifer A. Bernice and Patricia A. Erick, marital rape history, research and practice, (2003).
[38] Ibid
[39] Jennifer A. Bernice and practice A. Erick, marital rape history, research and practice, (2003),p.229.

decriminalize incest just because it is a family affair. The other rationale is that spousal rape is not as serious as non-spousal rape.

Another group of theories advocates that there is a quantitative and qualitative difference between marital rape and non-spousal rape. The quantitative argument is that, marital rape does not occur often enough for the criminal justice system to be concerned. The qualitative argument is that marital rape victims do not suffer much damage from the incident that it is really just a bedroom squabble that should not be treated like rape by a stranger. The other argument behind the exception is alternative remedies rationale.

The other view is that women can seek redress in other areas of law. They argue that because marital rape is not as serious as stranger rape, women should be allowed to file assault and battery charges but a husband should not be treated as "rapist."

The other problem that is raised by arguing that a woman that has remedies in assault and battery laws is that not all women who are raped by their husbands or who are physically abused. Thus, in a situation where a wife is raped by her husband but not beaten by him, he has effectively been given a license to rape since no criminal liability attaches to the act since her body lacks signs of physical abuse.

The argument that divorce is an alternative remedy justifying the marital rape exemption fails to acknowledge that divorce provides little relief for a woman who has been raped by her husband. To the extent that one believes in marriage based on equality and partnership and in the equal worth of women, the spousal exemption to forcible rape prosecution makes little logical or no legal sense. It should be noted however that this sorts of rationales are developed since “man has been the measure and the standard for establishing appropriate fair and reasonable behaviors.

2.4 Marital Rape as a violation of the fundamental rights of Women

There has been controversy over the years as to whether the right to individual privacy prevails over the right to marital privacy. One of the rationales behind the exemption of marital rape from prosecution was maintaining marital privacy. Following this, debates made pro individual privacy over marital privacy and the opposite will be shown. Moreover, marital rape as a violation of the individual right to privacy of women and their right to equal treatment under equal rights clauses will be dealt with.

2.5 Marital rape as a violation of the right to individual privacy of women

The right to privacy is an argument that has been advanced both on behalf of the husband rapist and the wife-victim. Many claim that the constitutional right of the husband's marital privacy is violated when interference is made with the guise of marital rape whereas those that support the recognition of marital rape as a crime state that marital rape is the violation of the individual right to privacy of the wife.[40]

Cases presented in different courts having the above mentioned arguments have inmost occasions been ruled in favor of the wife's right to individual privacy over the right to marital privacy. However, there are different interpretations as to what amounts to the right to privacy and when the line of that right is trespassed by others especially in case of spouses who have a shared right of marital privacy.

[40] Salle Ferry waterman, for better or worse: marital rape,(1988),p.12.

CHAPTER THREE

3 HUMAN INSTRUMENTS RELATED TO NON-CONSENSUAL SEX IN MARRIAGE

When we speak of human rights today, we generally mean rights as they are enshrined in the bill of rights.[41] The first international instrument to be universally applicable to all human kind is the Universal Declaration of Human Rights (UDHR). The declaration essentially recognizes the inherent dignity and of the equal and inalienable rights of all members of the human family as a foundation of freedom, justice and peace in the world. UDHR recognizes that all human beings are born free, equal in dignity and rights.[42] The act of marital rape is inherently degrading and is the result of the unequal treatment given to women and men and hence is the violation of this specific recognized right to dignity and equality of women with men. It also recognizes that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.[43] The act of marital rape is a cruel, inhuman and degrading act which violates this specific recognized right. On the same manner, it states that marriage shall be entered into only with the free and full consent of the intending spouses.[44] This shows that marriage is based on full consent of both parties, which has the connotation that even after that, their relationship would be based on free will.

The International Covenant on Civil and Political Rights (ICCPR), recognize in line with UDHR the inherent dignity and of the equal and inalienable rights of all members of the human family to be the foundation of freedom, justice and peace in the world. In the same fashion with UDHR, ICCPR recognizes that no one shall be subjected to torture or to cruel, inhuman or

[41] Kenneth W. Thumps(ed.), the moral imperatives of human rights,(1980),p.24.
[42] UDHR,(1948),Art.1
[43]UDHR,(1948), Art. 5
[44]Ibid,Art,16(2)

degrading treatment.[45] It also states that no one shall be held in servitude.[46] Marital rape has the nature of degrading women to the status of slaves as men treat them as they wish and violate their bodily integrity with zero restriction. ICCPR states that everyone has the right to liberty and security of person.[47].Marital rape violates women's right to freely choose when, where and how to have sexual relations with their spouses. Their right to be secured from unwanted sexual

relation and their right to security to sexual autonomy is violated as unwanted sexual intercourse is imposed on them. These rights are the fundamental percepts of any human rights and governments are instituted to secure them.[48]

According to Art 23(3) of ICCPR the textual copy of Art 16(2) of UDHR; thus, states that marriage shall be entered with full consent of the spouses. Art 24(4) states that appropriate measures shall be taken by states parties to ICCPR to ensure the equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. Marital rape discriminates between spouses during marriage as the forced sexual intercourse is degrading and burdensome on women. The right to equality of women in marriage is violated when they are abused with unwanted sexual intercourse coming from the perpetrators; their husbands. Art.26 of ICCPR acknowledges that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this provision, discrimination on the basis of sex is prohibited among others, such as race, color, language, religion and so on. Marital rape is also a violation of this specific provision since women are disproportionately affected by the act of marital rape on the basis of their sex, hence, is sex discrimination. The other international instrument that prohibits marital rape is International Covenant on Economic, Social, and

[45] ICCPR,(1976), Art.7
[46] Ibid,Art.8(2)
[47] Ibid, Art.9(1)
[48] L. Ronald Schema and Dewar V. Sander,FredrikA.Pager,the foundation freedom, (1966),p.44

Cultural rights, (ICESCR) 1966. In the same fashion with UDHR and ICCPR, ICESCR declares that marriage must be entered into with the free consent of the intending spouses.[49]Moreover, it is stated that the state parties to the present covenant recognize the right of every one to the enjoyment of the highest attainable standard of physical and mental health.[50] Marital rape causes short term as well as long term physical and mental damage. It is very difficult for victims of marital rape to recover from the incident of marital rape. As the perpetrator is a close acquaintance, recovering is a hard and long process.

Rape survivors always blame themselves for the incidents of marital rape and are in constant feelings of fear, depression and anger. The other psychological problem victims' face is loss of control over their own life. Marital rape also has health consequences such as unwanted pregnancy, physical damage and sexually transmitted diseases; hence, is a clear violation of ICE of ICESCR.[51]

The other international instrument that was mainly adopted to deal with the rights of women and to eliminate any sort of discrimination is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1981 and additional protocol,1999. The convention defines the term discrimination against women to mean: "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition and enjoyment of women's right irrespective of their marital status. Hence, as marital rape impairs women from enjoying their right to bodily integrity, right to individual privacy, right to equality in marriage and their right to inherent dignity on the basis of their sex, it is gender discrimination as defined in CEDAW. The convention prescribes that appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women must be adopted by states parties to the

[49] ICESCR,(1966),Art.10(1)
[50] Ibid Art.12(1)
[51] ICESCR,(1966),Art.12(1)

convention.[52]The convention further states that states shall take appropriate measures to modify social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices, which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.[53]Marital rape has developed from the stereotyped societal beliefs that it is the duty of the wife to please her husband and from a belief that the role of the wife is to be submissive and obedient whereas the husband is expected to be sexually aggressive and dominant. Hence, as marital rape is the result of this stereotyped belief that the female gender is inferior to the male gender, the state is under duty to abolish the practice by taking appropriate measures including modifying or abolishing existing laws as stated under the convention[54] or repealing all national penal provisions, that constitutes discrimination against women as marital rape exemption.[55] CEDAW accords women the same rights and responsibilities during marriage and state party to this convention are at duty to take all appropriate measures to make sure that these rights are respected in marriage.[56]Marital rape is an infringement of women's right to their sexual liberty, dignity and individual privacy; thus, states must take all appropriate measures to eliminate these discriminations that take place in marriage. In addition to the above mentioned recognitions, general recommendation of 19, 1992 recognizes that any kind of forced marriage, family violence and abuse, battering rape, sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes and other gender based violence must be abolished by the state.[57]Governments are at duty to be abide by their commitments to implement the convention in their home country. With this regard, the principle of non-intervention in matters

[52] CEDAW,(1981),Art.2(b)
[53] Ibid,Art.5
[54] CEDAW,(1981),Art. 2(f).
[55] Ibid, Art,2(g).
[56] Ibid Art,16(1),(c).
[57] Ibid, Art 2(f), 5 and 10(c).

that are within the domestic jurisdiction of states cannot be regarded as protective barrier behind which human rights can be systematically violated with impunity.[58] African Charter to Human and People's Rights (1981)is a regional document that can be cited for the recognition of women's human rights. The charter prohibits discrimination on the basis of sex and recognizes that every person is equal before the law.[59]it further states that every individual shall be entitled to equal protection of the law.[60] It is more over recognized that every human shall be entitled for integrity of his/her. The right to respect of the dignity inherent in a human being is accorded and cruel, inhuman or degrading treatment is prohibited[61]. Hence, forced sexual intercourse is a cruel and inhuman treatment that married women face in their everyday life which is violation of this recognized right. Like other international instruments that have been dealt with above, the African Charter on Human and Peoples' Rights recognizes the right to liberty and security of every individual.[62] States parties to the charter area liberty to eliminate any kind of discrimination against women which thus includes marital rape.

The Declaration on the Elimination of Violence against Women (DEVAW), 1994, also covers marital rape. It defines violence against women' as any act of gender based violence that results in or is likely to result in physical, sexual or psychological harm or suffering of women, including threats of such acts or coercion or arbitrary deprivation of liberty, whether occurring in public or private life.[63] Marital rape results in physical, sexual and psychological harm to women. Women are physically attacked while forced in to unwanted sexual intercourse, which results in physical as well as psychological pain. It also states that violence against women shall encompass, physical, sexual and psychological violence occurring in the

[58] Javier Perez de cellar, Human rights horizon,(2000),p.67.
[59] African Charter to Human and people's Rights,(1981),Art.2.
[60] Ibid, Art.3.
[61] African Charter to Human and Peoples Rights,(1981), Art.5.
[62] Ibid, Art.6
[63] Declaration on the Elimination of Violence Against Women,(DEVAW),(1994),Art.1

family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and related exploitation.

Thus, marital rape is explicitly recognized as violence against women under the declaration.[64] Moreover, Beijing Declaration plat form for action, 1995, section D, defines the term violence to mean any act of gender-based violence those results in, or is likely to result in physical, sexual or psychological harm or suffering to women; consequently, marital rape has been explicitly incorporated as violence against women.

3.1 National Laws on Marital Rape

3.1.1 The Federal Democratic Republic of Ethiopian Constitution / 1995.

The FDRE constitution recognizes multiple rights that protect the human rights of every being. At the preamble discrimination on the basis of sex is prohibited. Chapter three of the constitution is specifically devoted to fundamental rights and freedoms. Part one of this chapter deals with human rights. These rights must be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.[65] The inviolable right to life, the security of person and liberty; the right to protection against bodily harm and the right to protection against cruel, inhuman and degrading treatment are also recognized.[66]

Hence, as marital rape is a violation of women's right to protection against bodily harm and the right to protection against cruel, inhumane and degrading treatment, it is in violation of the women's constitutionally guaranteed rights.[67] The constitution deals with supremacy of the

[64] Ibid, Art.2
[65] The constitution of federal democratic republic of Ethiopia,(1995), Art.13(2).
[66] Ibid, Art. 14,16 and 18 respectively.
[67] Ibid, Art 9

constitution and states that that any law, customary practice or a decision of an organ of state or a public official, which contravenes this constitution, shall be of no effect.[68] Thus, laws that exempt marital rape from prosecution as the criminal law and customary practices that tolerate marital rape are unconstitutional. The constitution also specifically deals with the right to equality and asserts that all persons are equal before the law and states that discrimination on the basis of sex is prohibited.[69]

Marital rape is a discrimination on the basis of sex as women in marriage are subjected to rape because of the historical belief that it is a "wife's duty" to please her husband; hence, wives are victims of marital rape because of their sex, which is in infringement of the constitutionally guaranteed right to equality. In addition to the above recognized rights, the right to privacy of an individual is also recognized.[70] Part two of chapter three of the constitution deals with democratic Rights. In this part, the equal right of spouses during marriage is recognized; hence, marital rape is in violation of this recognized right as it denies women equal treatment in marriage. In addition to that the constitution does specifically deal with rights of women.[71] It states that "women shall, in the enjoyment of rights and protections provided for by this constitution have equal rights with men. It also states that women have equal rights with men in marriage. Moreover, the state is at duty to enforce the rights of women and eliminate the influences of harmful customs.[72] It further states that laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited. Hence, it is the responsibility of the state to eliminate practices (marital rape) that oppress and cause bodily and mental health on women.

[68] Ibid, Art.9(1)
[69] Ibid, Art. 26
[70] The FDRE constitution, Art.26
[71] Ibid, Art, 35
[72] Ibid, Art. 4

3.1.2 The Criminal Law/ 2004

The criminal code of the Federal Democratic Republic of Ethiopia of 2004 is where marital rape was highly expected to have coverage. However, the code defines rape as "whoever compels a woman to submit to sexual intercourse outside of wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance is punishable with rigorous imprisonment from five years to fifteen years."[73]

Hence, the criminal code only recognizes a rape that is committed outside of wedlock, which clearly shows that rape that is committed in marriage, has spousal exemption. The contrario reading of the provision is that even if a woman is compelled to submit to sexual intercourse by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, it is not a crime if the act is committed in wedlock. The application of this law results in absurdity as compelling a woman to submit to sexual intercourse either in or outside of wedlock by the use of violence or intimidation would be a violation of the constitutionally guaranteed rights to dignity, bodily integrity, and rights as the right to be free from bodily or mental harm and the right to privacy. Hence, marital rape violates chained rights contained in the constitution and other international instruments to which Ethiopia is a party such as CEDAW. The FDRE Constitution further states that any law or customary practice that contravenes the constitution is of no effect; hence, the provision that exempts rape that happens in marriage should be of no effect as several Human as well as Democratic rights are violated in doing so. Therefore, the criminal law that contains this provision should be amended in accordance with the recognized rights of the constitution. Though, Ethiopia women lawyers association lobbied for the incorporation of marital rape in the criminal law, in the amendment process, the law making bodies have disregarded it. The exact reasons why legislative bodies

[73]The Criminal Law,(2004), Art. 620.

were reluctant to criminalize marital rape in the recent amendment process is not documented.

The reasons for such reluctance are presumably motivated by stereotypical legal and moral arguments. The arguments that a wife has given permanent consent, that marital rape does not exist in practice and its inclusion undermines the confidence in marriage are not acceptable.[74]

CHAPTER FOUR

4. MARITAL RAPE IN OROMIA REGION PARTICULARLY IN MUNESA WOREDA

4.1. Marital Rape in Munesa woreda

As has already been discussed in the literature review part, different theories show that marital rape is gender discrimination having its own psychological and physical health consequences.[75] Those theories show that marital rape is more than a mere sexual act and need to be regulated in that manner. They also show that marital rape is a means to maintaining power. With this regard, low level of education, awareness and income are some of the factors that contribute to the commission of the crime. Therefore, these variables were employed in this study to show their contribution both to the commission and prevention of marital rape.

[74] Ethiopian Women Lawyers Association, Dimstachin, our voice, (2006), p.15.
[75] Elaine K. martin, Casey T. Taft, Patricia A. Erick, A review of marital rape,(2006),p.332.

4.2. Gender roles and marital rape

Some of the respondents have replied that they complied with unwanted sexual aggression mainly because they believed that it was their "wifely duty".[76] They also feel burdened with society's expectation that it is their duty to fulfill the sexual desires of their spouses even at times where the act is undesired. Society attached stereotypes of what a female should and should not do has a great impact on the way that women behave. Society requires women to be sexually submissive to their husbands where some level of sexual aggression is expected on the part of the husbands. Hence, marital rape is tolerated and kept a secret primarily because it is believed that it is a "wifely duty" to sexually submit to her husband's sexual aggressions. Women are victims of marital rape because of their gender and marital rape is a result of the stereotype attached to the female gender, the wives in our case; and therefore, is gender discrimination.[77]

Though marital rape is tolerated by the society, most of these marriages suffer from continuous disagreements. Most of respondents stated that their marriage suffers from continuous disagreements.

Some of the victims confirmed that they were forced to sexual intercourse without their desire. This comes from society's constructed belief that it is not up to women to consent to sexual intercourse but from a desire of a man to have it. This stereotype is gender discrimination since it perpetuates a practice that is to the determent of women

Despite society's belief that marital rape does not exist in marriage, some of victims resisted the act and raised their voice against their husbands. Again some of the victims resisted the act verbally where as some of them resisted the attack physically.[78] Other strategies such as discussion, pushing and the like were also used.

[76] Interview with made at women and children office in Munesa woreda January 01/01/2019.
[77] Ibid
[78] Ibid

It is, however, the most frequently asked that since one of the components of marriage is consummation, it is hardly possible to make sense out of women's resistance to sexual advances of their husbands. However, some of the victims stated that their reasons for rejection had grounds such as he was drunk, were not in good terms with their husbands at the time, not in a good mood, Fear of HIV, dissatisfaction with their life and the like. Therefore, though majority of respondents believed that sexual intercourse is a wifely duty, the finding indicates that, it becomes naturally impossible to always comply with the unwanted sexual advances when they don't have the interest, are pregnant, fear of contracting HIV and are not feeling healthy at the moment; thus, they would be obliged to object the advances of their husbands. Note that these women are suffering from the violation of their Human Rights; the substance of human rights includes all those rights, "which are so fundamental to man's nature that without them, he/she cannot truly live as a human being".[79] This study shows that women do not reject sexual advances of their husbands' for no reason. The husband must have a heart to understand that the woman that is carrying his child, the mother of his baby, might reasonably be tired for intercourse. Moreover, a wife should not be obliged to have intercourse with a husband whom she suspects to be unfaithful given the widely spread HIV/AIDS, which is a risk to her life. Consequently, husbands reacted to the rejection differently. Some women stated that their husbands were indifferent to the situation, where as some were intimidated, some others were aggressively attacked and obliged to intercourse. This study shows that women failed to resist for numerous reasons such as a belief that it is a wifely duty, physically unable to resist and the like.

4.2.1. Marital Rape and Health

Most of marital rape victims stated that the sexual aggression caused on them both psychological and physical damage.[80] They showed that the

[79] Human Rights, The International Observance, (1968), p.28.
[80] Interview with made at Munesa woreda court client January 01/1/2019.

unwanted sexual aggression resulted in betrayal, a feeling of shame on themselves, loss of trust on their husbands, and humiliation. Moreover, some of the victims stated that they felt the combined effects of betrayal, shame, loss of trust on their husbands and humiliation.[81] The unwanted sexual aggression has as well resulted in body scratches as a result of the physical struggle to commit forced intercourse and exposed to unwanted pregnancy. One of the effects of marital rape is that it has short term and long term consequences. These victims have to live with these health problems without having to share it with others since disclosing such matters is a taboo (inhibition) for women. Victims get unwanted pregnancy because of forced sexual intercourse. Marital rape also results in lower level of wellbeing, greater negative feelings towards men and sex, and mean while victims might as well learn self-efficiency.[82]

4.2.2. Reporting marital rape

All of victim respondents stated that they have not reported the incident of marital rape though the incident happened in their marriages.[83] All of victims stated that they felt it was shameful to disclose such private , Marital rape is socially constructed to be a private matter that should not be disclosed, it is shameful for a woman to come out and complain about marital rape; sexual matters are in general regarded to be realities that are supposed to be kept secrets.[84] Victims of marital rape blame themselves for incidents of marital rape and are shy that society would point fingers at them, if they do so.

In relation to this, in an interview held with Munesa woreda Court's Judge called Milkesa Bekele and Sedati Ahmed stated that victims came asking for divorce on the basis of marital rape.[85] The main problem, according to them was that victims went around the bush to get to the bottom of their

[81] Ibid
[82] Ibid
[83] Interview with made at Munesa woreda court client.
[84] Ibid
[85] Interview with made at Munesa woreda court judge January 01/01/2019.

problems. They stated that the main explanation for that was it was a taboo for women to reveal sexual matters. They further stated that many women used reasons such as failure to provide maintenance, conflicts over intoxication, and other similar reasons as a pretext for divorce; however, both of them affirmed that the main reason for claiming a divorce was the fact that they were victims of continuous unwanted sexual aggression by their husbands'.

Awareness as to the degrading and violent nature of marital rape is very low.[86] Some of the respondents filled in the questionnaire stating that they made informal complaints about the unwanted sexual aggression to their family and friends. Some of the interviewees stated that reporting this act to the police was regarded unaccepted and shameful.[87] They also stated that their family to whom they shared their stories with told them to solve the problems without having to share it with others. One respondent stated with this regard that "my husband requested to have sexual intercourse immediately after I got home from hospital, I was at hospital because I had a miscarriage" according to her, though she refused his request, he forcefully tried to have intercourse; as he did not manage to, he expelled her from her house. She stated that though I went to my mother's house, I was advised not to tell this to anybody; further her mother said which literally means "it is shocking, do not disclose this to anybody" therefore, she went back to her husband without any remedy.[88]

The larger number of reporting goes to the police according to the figure. The police avoid allegations that they believe to be private in nature as marital rape. This is one of the restrictions victims face for reporting. The fact that marital rape is exempted from prosecution sends a message to victims as well as perpetrators that the justice system tolerates the

[86] ibid
[87] Interview with made at Munesa woreda police officer January 01/01/2019.
[88] ibid

act. Victims are discouraged to report this trauma to a legal system which does not even recognized as a crime.[89]

The other reason for underreporting of marital rape is low level of awareness that marital rape is as serious crimes like stranger rape. Nearly half of the respondents believe that marital rape is less serious than stranger rape. The level of awareness that marital rape degrades women and violates different chained rights is not well entertained. All of respondents failed to report the unwanted sexual aggression; hence, the understanding that marital rape is less serious could as well be attributable to their failure to report. Further, respondents feel that the wrong nature of the act is not as grave and as serious as one that is committed with a stranger since there is marriage.[90] They might believe that it is a simple offense that needs a simple measure to correct their husbands. However, the demeaning nature of marital rape must be understood. Marital rape is not any less serious, but as much degrading, which violates the bodily integrity, personal autonomy, and individual privacy of women. The awareness of women on the status of their human rights and what they are worth of must be raised; otherwise, they would not claim what they do now to exist. Regarding the rationale behind believing that marital rape is less serious than stranger rape, some responded that the existence of marriage eases the cruelty of the act.[91] On the other handsome believe that there is a "wifely duty" which lessens the effect of marital rape as compared to non-spousal rape.

The existence of marriage shall neither be a license to forcefully illicit sexual intercourse, nor should it burden women to submit to sexual intercourse when they don't desire it[92]. The act is degrading by nature and the fact that this is perpetuated by women as well shows the systematic nature of the discrimination. The fact that there is no

[89] ibid
[90] Interview with made at Munesa woreda court president January 01/o1/2019.
[91] ibid
[92] ibid

coverage in the law loses the confidence of victims in the legal system. The fact that victims do not have alegal remedy may discourage them from reporting the incident either to police or other institutions.

4.2.3. Victims' Experience sharing

As has been stated in different sections of this paper, marital rape is a taboo for woman to talk about. However, some of the victims stated that they share their experiences with other people. Among victims, some stated that they shared their experiences with their friends, colleagues and family.[93] This shows that though marital rape is not recognized a crime, it is the concern of most women.[94] Marital rape is not a private matter but a social one which is designed to affect the female gender. Laws that criminalize marital rape should be legislated and there should be zero tolerance for the act.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. CONCLUSION

The objectives of the study were to assess gaps in the laws, to explore the reasons for under reporting of marital rape, showing that marital rape is a violation of the human rights of women and showing problems that hamper the prevention of marital rape. In carrying out this study, one sample institutions were selected i.e. Munesa woreda at the Oromia Regional State.

In this study, in addition to statutory and case analysis, different techniques such as distribution of conducting interviews and personal observations were employed. In the study, various variables, which have a direct or

[93] Interview with made at Munesa woreda court clients.
[94] ibid

indirect relation with marital rape such as Gender stereotypes, Individual Income, Health, Education and awareness, were chosen and analyzed. The main reason of this quantitative description was to show the coping strategies employed by marital rape victims and to show the significance that these variables have in preventing marital rape.

The major findings of the research are summarized below:

- There is apparent legal lacuna regarding criminalization of marital rape in the Ethiopian criminal justice system. The conduct of rape committed outside wedlock is criminalized by the Ethiopian There is a slight possibility that Briefly include the existence of legal gap and also indicate the possibility that the court my widely interpret the term rape but the basic principle of legality under criminal procedure prohibits them from doing so. The judge cannot create a crime by analogy.[95]Hence, there a clear legal provision that criminalize marital rape in Ethiopia. Moreover, due to the clandestine nature of the conduct, the criminal procedure part dealing with burden of proof over the victim and the public prosecutor has to be reframed in such a way to discourage the perpetrators from escaping from criminal liability.

• The data shows that most of respondents were forced to unwanted sexual intercourse without their desire and complied with unwanted sexual aggression with a belief that it is a “wifely duty”. This can be attributed to societies’ set standards of gender roles. Among these respondents, the marriages of most victims suffer from continuous disagreements. However forced in to undesired sexual intercourse, some of victims resisted the unwanted sexual aggression again some of the victims resisted the unwanted sexual intercourse because their husbands were drunk or were not in good terms with their husbands at the time and some were not in a good mood, feared HIV and were dissatisfied with their lives.

[95] Art, 2(3) criminal code 2004.

• Again most of respondents were intimidated for rejecting sexual advances where as some were aggressively attacked and forced to intercourses. some of respondents were successful in their resistance whereas most has failed to resist for reasons as “wifely duty”, physically unable to resist , Fear , unpreparedness to resist and fear and unprepared to resist combined.

• Most of victims have no education back ground. Some have primary education where as some of victim women had completed secondary high school and few of them had Bachelor Degree.

The increasing rate can be attributed to the level of awareness on the wrong nature of marital rape. This study shows that though many victims are fully dependent on their husbands’ income, those that have attained some level of education are better informed to report the incident of marital rape. However, the result also shows that attaining higher level of education does not guarantee freedom from marital rape.

• The study shows that the unwanted sexual aggression has resulted in both psychological and physical damages. Moreover, some of victims also stated that they felt betrayed, felt shame on themselves, lost trust on their husbands and felt humiliated. Again some had unwanted

Series of fundamental rights of women. Hence, serious attention is indispensable from the legal system, universities and academic institutions, the bar association and civil society with its grass root organizations for combating marital rape. On the basis of the above findings, the following conclusion and recommendations stand out.

5.2 RECOMMENDATIONS

- I recommend that the government should enact the Law which criminalizes marital rape like other crime.

- Marital rape should be seen and resolved from a legal point of view and in course of criminalizing it, the clandestine nature of the conduct has to be taken in to account in order to address the problem properly.
- Procedurally, the usual trend and principle of requiring the Victims to prove the incident beyond a shadow of doubt; though the principle of presumption of innocence shall still be maintained; reasonable degree of evidence should only be enough for marital rape victims to turn the burden of proof to the accused.
- There also needs to be concrete plans of action to be implemented, if marital rape is to be combated. In doing so, timetables must be set and funding be allocated to this purpose.
- The government should be give awareness to the societies regarding protection of marital Rape.
- The issue of marital rape has to be considered as a serious human right violation than simple crime and hence, the level of attention from the government and other stakeholders has to be commensurate enough to handle the problem.

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