

**MARITAL RAPE AS A VIOLATION OF THE
FUNDAMENTAL HUMAN RIGHTS OF WOMEN
(THE CASE OF HAWASSA CITY)**

**Submitted in partial fulfilment of the requirement of degree of Master
of Art in Human Rights, at the Department of Institute of Human
Rights, Addis Ababa University.**

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February 2011**

DECLARATION

I, Helen Abelle, declare that the work presented in this thesis is original. It has never been presented to any institutions. Where the work of other persons has been used appropriate citation and quotation are used. In this regard I declare this work as originally mine.

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APPROVAL SHEET – 1

I, Ato Wondemagegn Tadesse, declare this study has been conducted under my supervision and further declare that I have approved its submission for the partial fulfilment of the requirement for the degree of Master of Art in Human Rights at the Graduate Program of the Department of Institute of Human Rights, Addis Ababa University.

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APPROVAL SHEET – 2

We, the undersigned, members of the Board of Examiners of the final defence by Helen Abelle Melesse have read and evaluated her thesis entitled “marital rape as a violation of the fundamental human rights of women (the case of Hawassa city)” and examined the candidate. This is therefore to certify that the thesis has been accepted in partial fulfilment of the requirements for the degree of Master of Art in Human Rights.

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Acronyms

ACHPR- African charter on human and peoples' rights

AIDS- Acquirem Immune Deficiency Syndrome

CEDAW- Convention on the Elimination of all forms of Discrimination against Women

DEVAW- Declaration on the Elimination of all forms of Violence against Women

FDRE – Federal Democratic Republic of Ethiopia

HIV- Human Immunity Virus

HRC- Human Rights Committee

ICCPR- International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic, Social and Cultural Rights

NGOs- Non Governmental Organizations

SNNPRS- Southern Nations Nationalities and People Regional State

SPSS- Statistical Package for Social Science

SRVAW- Special Rapporteur on Violence against Women

UN- United Nations

WHO- World Health Organization

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CHAPTER ONE

1.1. Background

Women are subject to violence in their daily lives, both in times of war and in times of peace. Violence against women is the manifestation of historically unequal power relations between men and women, which have led to domination over discrimination against women by men and to the prevention of their full advancement.¹ It is one of the crucial social mechanisms by which women are forced in to a subordinate position compared with men.² Violence against women shall also be understood as any act or conduct, based on gender, which causes death or physical, sexual and psychological harm or suffering to woman in the public or private sphere.³

Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms.⁴ In the mean time, the global commitment to equal human rights for women has progressed rapidly during the last 50 years.⁵ Now a day's almost all declarations, conventions and statutes declare the equality of men and women and the fact that all rights are applicable for both in equal manner. Convention on rights of women against discrimination, international covenant on civil and political rights, international covenant on economic, social and cultural rights, etc. could be good examples.

Since the acknowledgment of women's equality with men is a current issue, it is not fully recognized in most part of the world, in which Ethiopia is categorized. Ethiopia is still considered as a patriarchal society, where men have higher status than women.⁶ This belief gives men the courage to show their status by any means they can. One of the ways in which men show their dominance and strength is by abusing women and violating their rights.

¹ G. Alfredsson and K. Tomasevski, A Thematic Guide to Documentation on the Human rights of Women. (1995) p.51

² ibid

³ ibid p.324-325

⁴ Platform for action and Beijing Declaration, 1995, p.112

⁵ J. Symonides, Human rights: concept and standards(Ed.2000), p.231

⁶ The Ethiopian chapter of OSSREA(2008)p.59

In Ethiopia, women have been considered as inferiors than men for centuries. Even if they have equal rights with men under different laws including the FDRE constitution, they are not treated by the society as equals. The inequality starts at home. Men abuse their wives, which takes different forms. And the majority of women have accepted their subordinate position as the figure shows 85% of women in Ethiopia believe the husband is justified in beating his wife if she neglects the children, burns the food, argues with the husband, go out some place without telling him, and refuses to have sex with him.⁷

Most violations against women's rights occur within the family, where in Ethiopia, such issues are considered to be private. This makes violence within the family to aggravate and women unable to protect themselves by raising their rights. It also, in one hand encourage abusers and in the other hand lets other member/s of the family to be potential abusers in the future.

Women face different types of violence in their lives. It can be sexual assault on streets, under age marriage, rape, marital rape, domestic violence etc. Among the violence women faces at their homes, one of them is marital rape. Marital rape is a form of coercion by which husbands maintain dominance over their wives.⁸ It is difficult to assess the incidence of marital rape, as many women who are coerced in to sex do not define this as rape. In Ethiopia marital rape is not considered as a serious violation of women's human rights. Thus, stake holders have not given due consideration to the alleviation of this problem. Still there are no laws in the country protecting women from this violence. As a result marital rape is the most under-researched area.

Therefore, in this paper, the writer attempts to examine marital rape from human rights perspective. Both international and local laws concerning women's rights against marital rape, international agreements concerning marital rape, and international human rights organizations reports on marital rape will also be discussed. This chapter includes statement of the problem, research questions, objective of the study, significance of the study, scope, limitation, methodology and structure of the study.

⁷ The Ethiopian chapter of OSSREA(2008), p.59

⁸ S. Lee, Ruling Passion: sexual violence, reputation and the law(1997),p. 110

1.2. Statement of the Problem

Treating marital rape as a crime is a recent phenomenon. Men had been exempted from being prosecuted for raping their wives for long time. Recently international human rights organizations have given due consideration for abolition of the exemption from prosecution of marital rape because it was understood that, it is a violation of the fundamental human rights of women. As a result some countries have abolished the marital rape exemption.

In Ethiopia, even if there are developments in protecting the rights of women and the Ethiopian constitution acknowledges the rights of women to body integrity, the exemption from marital rape prosecution still exists. And the stake holders for the protection of the rights of women are not responding for this problem yet. This is a violation of the obligations the country has entered by ratifying international human rights instruments by which the country has promised to protect the rights of women from violence and discrimination.

The unavailability of laws against marital rape hinders women from seeking for protection from the police or other institutions. Therefore, this paper is intended to show how marital rape affects the fundamental human rights of women. The questions the writer wants to address here are;

- Which fundamental human rights of women are violated by marital rape?
- What are the causes and effects of marital rape?
- What are the major factors which result in the lack of due attention for the criminalization of marital rape?
- Who are the stake holders responsible for the alleviation of the problems caused by marital rape?
- What is the prevalence of marital rape in Hawassa?
- What should be done to solve this problem?

1.3. Objective of the Study

1.3.1. General Objective

The general objective of this study is to elucidate marital rape as a violation of women's fundamental human rights.

1.3.2. Specific Objectives

- To identify the rights of women, if any, violated by marital rape.
- To examine the root causes, as well as, the effects of marital rape.
- To assess the major factors resulting in the lack of due attention for the criminalization of marital rape in Ethiopia.
- To point out the stake holders who are responsible for the alleviation of this problem
- To assess the prevalence of marital rape in Hawassa city.
- To forward recommendations that would, if implemented properly, decrease the prevalence of marital rape in Ethiopia.

1.4. Significance of the Study

This paper has significance in creating awareness about causes and effects of marital rape, and to clearly show that it is a human rights violation. It also attempts to bring attitudinal change which in return promotes protection of women. The other significance could be to influence stake holders to consider marital rape and give due attention to alleviate the problem.

The paper also states the possible recommendations that may help in alleviating or reduction of marital rape. As far as the knowledge of the researcher is concerned, no comprehensive research has been done on marital rape. Thus, it may also extend some sort of knowledge on marital rape for the readers of this thesis. The writer also strongly believes that, this paper could have significance in assisting other researchers who are interested in doing similar work.

1.5. Scope of the Study

From various forms of violence against women in Ethiopia, which each needs a separate study, this research is limited to marital rape. Hawassa City is taken for this study purpose and data was collected from 7 urban sub-cities with in Hawassa city. Women who are ever married were taken for this study purpose.

1.6. Limitation of the Study

Some of the limitations of this study were the privacy of the issue under consideration. Since issues within a family are considered as personal matters in Ethiopia and marital rape falls under this sort, it was difficult to convince informants to uncover what seems their family's secret. As a result the study used data from the urban portion of Hawassa city only; therefore, the findings of this paper should be interpreted very carefully when they are inferred to the national level. Resource and time limitations to carry out this study were also the challenges which confronted the researcher.

1.7. Methodology

The aim of this section is to describe the study area and population as well as to state the sources of data used in the analysis.

1.7.1. Description of the Study Area and Population

Hawassa is the capital city of Southern Nations, Nationalities and peoples Regional State (SNNPR). It is located at the Eastern Shore of Lake Hawassa, it is 275km south of Addis Ababa (via Debrezeit, Meki, Shashemena), 130km east of Sodo, 75km north of Dilla and 1125km north of Nairobi.⁹ It covers 50 square kilo meters and lies at an elevation of 1700 meters above sea level.¹⁰

Hawassa is the economic and cultural hub of the region. It is divided in to 8 kifle ketemas (sub-cities) and 32 kebeles.¹¹ According to the result of housing and population census which took place in May, 2008, the Hawassa city administration has a population of 259,803 people, out of which 133,637 are male and 126,166 are female.¹² From the above stated population 159,013 people live in urban area, while the remaining 100,790 live in rural area of the city administration.¹³

⁹ Awassa-Wikipedia, the freeencyclopedia

¹⁰ ibid

¹¹ Hawassa City Administration Socio-Economic profiles 1999-2001E.C.

¹² ibid

¹³ ibid

1.7.2. Source of Data

There is no recent data collected for the purpose of related study in Hawassa city, therefore, the major source of the data for this paper is gathered from each kebele in the kifle ketemas (sub-cities), municipalities and city administration. The study has mainly used primary data from sampled respondents in the sub-cities, who had ever married, by preparing questioners and by using focused group discussions, the writer tried to see the attitude of the society towards marital rape. The writer has also made interviews to know the outlook of those who have a duty to protect the rights of women. The data for the study is gathered by trained data collectors using standard questionnaires prepared in Amharic language. Interviews and focused group discussions were made by the researcher.

1.7.3. Sampling Design

1.7.3.1. Sampling Procedure

Sampling Methods are scientific procedures of selecting those sampling units that would provide the required estimator with associated margins of uncertainty arising from examining only a part of the population. The study population is women who had ever married and residing in Hawassa city. In this study stratified random sampling method is adopted as an appropriate sampling design for selecting a representative sample of the population. The whole city is divided in to 8 sub-cities, 7 urban and 1 rural sub-cities. The writer considered only the 7 urban sub-cities as strata and then the household from respective sub-cities are selected by simple random sampling based on a sampling frame of list of householder's record in each Kebeles within each sub-city.

The divisions/stratifications are:

Stratum 1: women who are ever married in Menehariya sub-city with population size N_1 and sample size n_1 .

Stratum 2: women who are ever married in Bahil-Adarash sub-city with population size N_2 and sample size n_2 .

Stratum 3: women who are ever married in Tabour sub-city with population size N_3 and sample size n_3 .

Stratum 4: women who are ever married in Misrak sub-city with population size N_4 and sample size n_4 .

Stratum 5: women who are ever married in Mehal-Ketema sub-city with population size N_5 and sample size n_5 .

Stratum 6: women who are ever married in Addis-Ketema sub-city with population size N_6 and sample size n_6 .

Stratum 7: women who are ever married in Hake-Dare sub-city with population size N_7 and sample size n_7 .

The total number of women who are ever married is:

$N = N_1 + N_2 + N_3 + N_4 + N_5 + N_6 + N_7$. Hence, the total sample size of women those participated in the study is:

$$n = n_1 + n_2 + n_3 + n_4 + n_5 + n_6 + n_7$$

1.7.3.2. Sample Size Determination

Too large sample requires a huge amount of resources and too small sample decreases the quality of the results. Hence, the decision should be made with a minimum cost and the characteristic of the population are explained by the high probability of the estimate. When Stratified random sampling technique is used to estimate the population proportion, the following formula for sample size n was used.¹⁴

$$n = \frac{\sum_{i=1}^L \left(\frac{N_i^2 p_i q_i}{W_i} \right)}{\frac{N^2 d^2}{Z^2} + \sum_{i=1}^L N_i p_i q_i} = \frac{N * \sum_{i=1}^L N_i p_i q_i}{\frac{N^2 d^2}{Z^2} + \sum_{i=1}^L N_i p_i q_i}$$

Where

n = is the sample size needed

p_i = is the sub population proportion for stratum i means the probability that a woman has martially raped. It is obtained from a previous study. According to a study conducted by Jennefer and Resick (2003), random-digit dialing to all fifty states of America including the district of Colombia resulted in a sample of 8000 women, 7.7% of surveyed women reported being raped by an intimate partner at some point of their lives. Hence, $p = 0.077$ which is:

$$p_1 = p_2 = p_3 = p_4 = p_5 = p_6 = p_7 = 0.077$$

$$q_i = 1 - p_i = 1 - p_1 = 1 - p_2 = 1 - p_3 = 1 - p_4 = 1 - p_5 = 1 - p_6 = 1 - p_7 = 0.923$$

¹⁴ W. Cochran, Sampling Techniques.(3rd Ed. 1997)

$d = 0.04$, the precision level which is the margin of error. The specification of d must be small to have a good precision.

$L = 7$: is the total number of strata.

N_i = Total number of population in each stratum that is the size of stratum i

$N_1 = 3406, N_2 = 2036, N_3 = 5528, N_4 = 3038, N_5 = 1819, N_6 = 2395, N_7 = 2145$

$N = 20,367$

W_i = is the estimated proportion of N_i to N .

Z = is the inverse of the standard normal cumulative distribution that correspond to the level of confidence which is equal to the upper $\frac{\alpha}{2}$ point of standard normal distribution,

where $\alpha = 0.05$, i.e. $Z_{\frac{\alpha}{2}} = Z_{0.025} = 1.96$

Since,

$$n = \frac{(20367)^2 * 0.077 * 0.923}{\frac{(20367)^2 * (0.04)^2}{(1.96)^2} + 0.077 * 0.923 * 20367} = 169.224 \approx 169$$

Thus the sample size needed is $n = 169$

The sample size for the i^{th} stratum is $n_i = w_i * n$, so that

$n_1 = 3406/20367 * 169 = 28, n_2 = 2036/20367 * 169 = 17, n_3 = 5528/20367 * 169 = 46$

$n_4 = 3038/20367 * 169 = 25, n_5 = 1819/20367 * 169 = 15, n_6 = 2395/20367 * 169 = 20$

$n_7 = 2145/20367 * 169 = 18$

Further, using proportional allocation of the above sample sizes from each stratum, the sample size for each kebele is as follows:

Table 1: Sample Size Determination of each Kebeles (Hawassa City, December 27, 2010-January 7, 2011).

Strata	Number of Married women	Kebeles	Total of women in each stratum (N_{ij})	Sampled women (n_{ij})	Total Sample
Menehariya Sub city	$N_1 = 3406$	Guwe	1540	13	$n_1 = 28$
		Piassa	636	5	
		Millinium	1230	10	
Bahil Adarash Sub city	$N_2 = 2036$	Andenet	578	5	$n_2 = 17$
		Harar	618	5	
		Adare	840	7	
Tabour Sub City	$N_3 = 5528$	Hogalewato	1250	10	$n_3 = 46$
		Tilte	1018	9	
		Hitita	895	7	
		Fura	945	8	
		Dume	1420	12	
Misrak Sub city	$N_4 = 3038$	Teso	1470	12	$n_4 = 25$
		Wikro	1568	13	
Mehal-Ketema Sub city	$N_5 = 1819$	Leku	515	4	$n_5 = 15$
		Addis Abeba	620	5	
		Nigat Kokeb	684	6	
Addis-Ketema Sub city	$N_6 = 2395$	Daka	1115	9	$n_6 = 20$
		Filedelfia	1280	11	
Hayke-Dare Sub city	$N_7 = 2145$	Gebeya Dare	1117	9	$n_7 = 18$
		Gudumale	1028	9	

1.8. Structure of the Study

The thesis is composed of five chapters. The first chapter discusses background of the study, statement of the problem, objective of the study, significance of the study, scope, and methodology. Chapter two gives a general over view of marital rape. In chapter three rights of women which are violated as a result of marital rape are discussed; Chapter four discusses international, regional and domestic human rights laws dealing with marital rape. From domestic (national) laws regarding the rights of women, the Ethiopian constitution is discussed. Chapter five is about collecting and analyzing data. Finally conclusions and recommendations about the whole research are given.

CHAPTER TWO

2. General Overview of Marital Rape

In this chapter the writer tries to give a general overview of marital rape. As stated in chapter one, marital rape is part of violence faced by women as a result the writer starts by giving a brief description of violence and rape. The chapter also includes types and effects of marital rape; history of exemption and countries which have abolished the exemption are also discussed under this chapter.

2.1. Violence against Women

Violence affects the lives of millions of women worldwide, in all socio-economic and educational classes.¹⁵ It cuts across cultural and religious barriers, impeding the right of women to participate fully in society.¹⁶

With women, the social boundaries are more clearly defined in the sense that there are clear lines between what is and is not legitimate or respectable behavior for a woman compared to men.¹⁷ The controls over their social behavior are more stringent.¹⁸

Research has shown that violence experienced by women is most likely to occur in intimate relationships with men.¹⁹ The onset of systematic and severe violence against women is almost exclusively associated with entering a permanent relationship with men.²⁰ Only in a prison or similar institution would an individual be likely to encounter such persistent abuse, violence and terror.²¹

Within patriarchal society women who are victimized by male violence have had to pay a price for breaking the silence and naming the problem.²² They have had to be seen as fallen women who have failed in their 'feminine' role to sensitize and civilize the beast in man.²³

¹⁵women and violence, the work of the special Rapporteur, published by the United Nations Department of Public Information, DPI/1772/HR-february 1996

¹⁶ ibid

¹⁷S. Lees, Ruling Passion: sexual violence, reputation and the law (1997), p.82

¹⁸ ibid

¹⁹ Ibid, p.109

²⁰ ibid

²¹ Ibid, p.110

²² Ibid, p.111

²³ S. Lees, Ruling Passion: sexual violence, reputation and the law (1997), p. 111

2.2. The Crime of Rape

The word rape is derived from a Latin word 'rapere' which means to take by force.²⁴ It is the use of force, without the victim's consent, or threat of force to penetrate the victim's vagina or anus by penis, tongue, fingers, or object, or the victim's mouth by penis.²⁵ Rape is a physical and emotional assault on woman, which has a devastating impact on her physical, psychological and sexual well being.²⁶

The crime of rape is regarded by many people, both within and outside the legal profession, as the most serious sexual offence, and indeed as one of the most serious of all offences.²⁷ The very personal nature of the requisite physical act together with the almost inevitable violation of the victim makes rape one of the most feared crimes.²⁸

Of the reasons that lead women to being sexually attacked, one of it is that most women today live in patriarchal societies.²⁹ Patriarchy tells men that their needs for love and respect can only be met by being masculine, powerful, and ultimately violent.³⁰ As men come to accept this, their sexuality begins to reflect it and rape is the logical end of masculine sexuality.³¹

Moreover, female desire is conceptualized in contradictory ways.³² And a woman's body is seen as dangerous, seductive and unpredictable.³³ As a result women are seen as neither honest nor aware of their desires, implying that they are ruled by their bodily urges and therefore, are not fully aware of what they want.³⁴ When a woman says 'No' she doesn't always mean 'No'.³⁵ This and similar beliefs lead men to force women in to sexual intercourse without considering their consent.

In other hand researchers have found out that some men force women to engage in sexual acts against their will as part of a process of humiliation and dominance.³⁶ In

²⁴ J.Single, Criminology (5th ed. 1995), p.298

²⁵ P. Rath, marital rape and the Indian Legal scenario, India Law Journal, 2007

²⁶ www.wesley.edu/WCW/WRN

²⁷ <http://www.asafeplace.org/help.org/donations.htm/>

²⁸ ibid

²⁹ www.wikigender.org

³⁰ L.Peter and S.Anson, Violence, Inequality, and Human Freedom(2003), p.137

³¹ ibid

³² Ibid, p.75

³³ ibid

³⁴ ibid

³⁵ L.Peter and S.Anson, Violence, Inequality, and Human Freedom(2003), p.137

³⁶ S. Lees, Ruling Passion: sexual violence, reputation and the law (1997), p.110

such circumstances British and American researchers reveal that women usually remain physically passive in order to avoid more serious or prolonged attacks.³⁷

Rape can occur anywhere, even in family, where it can take the form of marital rape or incest.³⁸ It occurs in the community where a woman can fall prey to any abuser.³⁹ It also occurs in situations of armed conflict and in refugee camps.⁴⁰ Rape is still being used as a weapon of war, a strategy used to subjugate and terrify the entire community.⁴¹ Soldiers deliberately impregnate women of different ethnic groups and abandon them when it is too late to get abortion.⁴²

Rape in any form is an act of utter humiliation, degradation and violation rather than an outdated concept of penile/vaginal penetration.⁴³ Restricting an understanding of rape reaffirms the view that rapists treat rape as sex and not violence and hence, condone such behavior.⁴⁴

Victims of rape are impacted in many ways.⁴⁵ In addition to suffering physical injury they suffer great distress with the memory of what happened to them, worrying about the risk of pregnancy and disease and living with feeling of guilt, shame and self-loathing; victims often blame themselves for succumbing to the rape.⁴⁶

2.3. Marital Rape in General

Marriage is a bond of trust and that of affection.⁴⁷ Every other type of relationship or responsibility that exists between husband and wife can be shared by any other two individuals; financial support, household duties, companionship etc, it is the intimacy which is uniquely reserved by torch for husband and wife to share with, and only with each other.⁴⁸

³⁷S. Lees, Ruling Passion: sexual violence, reputation and the law (1997), p.110

³⁸ women and violence, the work of the special Reporter, published by the United Nations Department of Public Information DPI/1772/HR-february 1996

³⁹ ibid

⁴⁰ ibid

⁴¹ ibid

⁴² ibid

⁴³ P. Rath, marital rape and the Indian Legal scenario, India Law Journal, 2007

⁴⁴ ibid

⁴⁵ www.wesley.edu/WCW/WRN

⁴⁶ ibid

⁴⁷ P. Rath, marital rape and the Indian Legal scenario, India Law Journal, 2007

⁴⁸ WWW.JSafe.org April 24,2006

Marriage in modern times is partnership of equals.⁴⁹ And sexual relations are defining factors of marriage.⁵⁰ But a husband exercising sexual superiority, by getting it on demand and through any means possible, is not part of the institution.⁵¹ Moreover, it is appalling to see the idea of marriage as the transfer of ownership of a woman and her body from her father to her husband, thereby entitling her husband to sex as and when he pleases.⁵²

Sexual relations in marriage are meant to be an expression of love, intimacy and sanctity.⁵³ They are an interaction between two people that find themselves at their most vulnerable and exposed, physically and emotionally.⁵⁴ It is for this reason and others that while respect and dignity should define all human dealings, they are essential in sexual interactions.⁵⁵ Non-consensual and forced sexual relations degrade and defame sexual intimacy as well as partnership one is obligated to love and respect.⁵⁶

In marriage the husband and the wife are presumed to become one, one being entitled to the others body.⁵⁷ Thus up on her marriage a woman is too frequently has assumed to have forever consented to sexual relations with her husband for “the body of the man belongs to woman and is the woman’s.”⁵⁸

In some cultures, also, after marriage the woman is under the ownership of her husband.⁵⁹ She surrenders her will as well as her body.⁶⁰ A wife is required to satisfy her husband in every way and if she refuses he has a right to use force in order to discipline her.⁶¹ She should be able to live by his rule.

Since sexual relation is part of marriage set-up it becomes unlikely for a woman to refuse to have sex with her husband.⁶² As a result rape in marriage is the most common,

⁴⁹ S. Lees, Ruling Passion: sexual violence, reputation and the law(1997), p.117-118

⁵⁰ WWW.JSafe.org April 24,2006

⁵¹ P. Rath, , marital rape and the Indian Legal scenario, India Law Journal, 2007

⁵² <http://laicite.wordpress.com>, July2, 2009

⁵³ WWW.JSafe.org April 24,2006

⁵⁴ *ibid*

⁵⁵ *ibid*

⁵⁶ *ibid*

⁵⁷ *ibid*

⁵⁸ *ibid*

⁵⁹ Sexual Assault among intimates:Frequency, Consequence & treatment, Dr. M.Judith and Dr.M.Ann, October 2005.

⁶⁰ *ibid*

⁶¹ *ibid*

⁶² *ibid*

yet most neglected, area of sexual violence.⁶³ Therefore, the special contract called marriage not only has economic and cultural significance, it also grants men immunity from being charged for ‘raping’ their wives.⁶⁴ In giving them this immunity the inherent message is that men are entitled to have sex with their wives, regardless of the latter’s consent.⁶⁵

Such beliefs have also made women to believe as if they have no right to say no and there is no need to give their consent. As a result, although women say marital rape seriously undermines their confidence and self-esteem, they prefer not to make a formal complaint.⁶⁶

Marital rape encompasses a distinct paradigm that draws upon elements of the tension found in domestic violence (family privacy versus protection from violence) and non-marital rape (consent and issue of proof).⁶⁷ Marital rape is a distinct problem that must recognize the convergence of issue of domestic violence and non-marital rape to create separate analytical framework.⁶⁸

Rape in marriage is a serious and prevalent form of violence against women.⁶⁹ While the legal definition varies, in some countries marital rape can be defined as any unwanted intercourse or penetration (vaginal, anal or oral) obtained by force, threat of force or when a wife is unable to consent.⁷⁰ Sexual acts include, but are not limited to, penile vaginal intercourse, the insertion of genitals in to the mouth or the insertion of objects in to the vagina or anus.⁷¹ A wife does not need to be “putting up a good fight” for it to be rape.⁷² When a woman submits to sexual acts out of fear or coercion it is rape.⁷³

⁶³Sexual Assault among intimates:Frequency, Consequence & treatment, Dr. M.Judith and Dr.M.Ann, October 2005.

⁶⁴ ibid

⁶⁵ <http://laicite.wordpress.com>, July2, 2009

⁶⁶ WWW.thewip.net by Lesley D.Biswas India

⁶⁷ S. Fry Waterman, For Better or Worse: Marital Rape,(1988), p.30

⁶⁸ ibid

⁶⁹ Mynation.net/study-report-marital/rape.htm

⁷⁰ Mynation.net/study-report-marital/rape.htm

⁷¹ www.Welleseley.Edu/WCW/WRN 2000

⁷² ibid

⁷³ ibid

Spousal/marital abuse is considered a crime of secrecy because it often goes unreported.⁷⁴ Like other forms of rape, experts say it is all about power and control.⁷⁵ It is inflicted by a partner in an intimate relationship to control or intimidate the other partner. The couple may be married⁷⁶, divorced, unmarried, separated or the same sex.⁷⁷

2.3.1. Types of Marital Rape

There are three major types of marital rape, which are identified by legal scholars as generally prevalent in the society. These are;

Battering Rape: - In “battering rapes” women experience both physical and sexual violence in the relationship and they experience this violence in various ways.⁷⁸ Some are battered during the sexual violence or the rape may follow in physically violent episode where the husband wants to make up and coerces his wife to have sex against her will.⁷⁹ The majority of marital rape victims fall under this category.⁸⁰

Force only rape: - In what is called force only rape husbands use only the amount of force necessary to coerce their wives; battering may not be characteristic of this relationship.⁸¹ The assaults are typically after the woman has refused sexual intercourse.⁸²

Obsessive rape: - Some women experience what has been labeled “Sadistic” or “obsessive” rape, these assaults involve torture or “perverse” sexual acts and are often physically violent.⁸³

⁷⁴ www.wikigender.org

⁷⁵ *ibid*

⁷⁶ For this study the writer takes only marital rape against married women in heterosexual marriage.

⁷⁷ *ibid*

⁷⁸ Marital rape, Myth, Reality and need for Criminalization, S. Mishra, S. Sigh, 2003

⁷⁹ *ibid*

⁸⁰ *ibid*

⁸¹ *ibid*

⁸² *ibid*

⁸³ Marital rape, Myth, Reality and need for Criminalization, S. Mishra, S. Sigh, 2003

2.3.2. How are women raped by their partner different from other rape victims?

Statistics indicate that spousal rape occurs more often than rape by a stranger.⁸⁴ Approximately 1.5 million women are raped and/or physically assaulted by an intimate partner annually in the United States alone.⁸⁵

Women raped by partners are violated by someone with whom they share their lives, homes and possibly children.⁸⁶ In addition to the violation of their bodies they face with a betrayal of trust and intimacy.⁸⁷ Even if it has these and other effects most of the times, victims of wife rape are not likely to see their situation as violation of their rights.⁸⁸ Rather they see it as their marital duty.

'Real rape' which is rape by a stranger is usually a onetime event and is clearly understood as rape (as it is committed by a stranger).⁸⁹ However, marital rape is likely to happen repeatedly, but it is not understood as traumatic as the former because, as often assumed, spouses have been sexually intimate.⁹⁰ Though society has recently begun to recognize wife rape as a crime, opinion polls show that people still believe that wife rape is "less harmful" than stranger rape.⁹¹

In supporting the above argument of repetitiveness of marital rape, researchers indicated that wife rape victims are more likely to be raped multiple times compared with stranger and acquaintance rape victims.⁹² In researches done on wife rape victims, most report being raped more than once, with at least 1/3 of the women reporting being raped more than 20 times over the course of their relationship.⁹³ In addition, it is found out that women who experience wife rape suffer long lasting physical and psychological injuries at least as severe as stranger rape victims.⁹⁴

⁸⁴ L.peter and S.Anson, Violence, Inequality, and Human Freedom (2003),p.132

⁸⁵ ibid

⁸⁶ www.Wellesely.Edu/WCW/WRN

⁸⁷ ibid

⁸⁸ ibid

⁸⁹ ibid

⁹⁰ ibid

⁹¹ ibid

⁹² Sexual Assault among intimates:Frequency, Consequence & treatment, Dr. M.Judith and Dr.M.Ann, October 2005.

⁹³ ibid

⁹⁴ Sexual Assault among intimates:Frequency, Consequence & treatment, Dr. M.Judith and Dr.M.Ann, October 2005

However in both cases, trauma from the rape adds to the effect of other abusive acts and demeaning talk.⁹⁵ Against this, one can claim that in the case of marital rape the history of relationship affects the victim's reaction, and thus, this could easily be classified as part of an abusive relationship.⁹⁶ Along with, there is a widely held view that a man and a woman surrender their consent to sexual intercourse upon entering marriage.⁹⁷ As a result the law has been slow to criminalize marital rape from sexual assault program and see marital rape as a family violence problem and many programs for battered women see it as a sexual assault issue.⁹⁸

The fact that rape statutes exist, however, is a recognition that the harm caused by a forcible rape is different, and more severe, than the harm caused by an ordinary assault.⁹⁹ And prosecuting a husband for assault and battery would not redress the more serious harm caused by rape.¹⁰⁰ Rape is a crime of violence and not just in a sexual sense since it is also a crime of humiliation, degradation, and domination designed to leave scars on the victim.¹⁰¹

Raquel Bergen, a researcher and scholar on marital rape, noted that assimilating marital rape survivors in to the category of other domestic violence victims ignores the reality that some women are raped by their husbands but do not experience other forms of violence and to categorize marital rape only as an extension of domestic violence excludes these women and their experiences.¹⁰²

Studies suggests that marital rape is frequently quite violent and generally has more sever and traumatic effects on victim than non-marital rape.¹⁰³ If accounts of the incident by victims are given any merit at all, then marital rape victims are often emotionally scarred for life.¹⁰⁴ One study found that 52% of marital rape victims suffer extreme long-term effect.¹⁰⁵ Moreover, psychologists tend to agree that the identity of

⁹⁵Sexual Assault among intimates:Frequency, Consequence & treatment, Dr. M.Judith and Dr.M.Ann, October 2005

⁹⁶ibid

⁹⁷ ibid

⁹⁸ ibid

⁹⁹ S. Fry Waterman, For Better or Worse: Marital Rape(1988), p.8

¹⁰⁰ ibid

¹⁰¹ibid

¹⁰² ibid

¹⁰³ibid

¹⁰⁴ S. Fry Waterman, For Better or Worse: Marital Rape(1988), p.8

¹⁰⁵ ibid

rapists does not lessen the traumatic effect on women who are raped.¹⁰⁶ The worst part about being victim of marital rape is that the woman has to confront her rapist the next day and is reminded that this man violated her love and trust.¹⁰⁷

Since women who are raped by their husbands are exposed to attack by someone they presumably loved and trusted, many marital rape survivors suffer severe and long-term psychological consequences.¹⁰⁸ Wife rape often evokes a powerful sense of betrayals, deep disillusionment, and total isolation.¹⁰⁹ Since marital rape is an abuse within the binds of the family, thus, victims are especially reliant upon outside protection from police and courts.¹¹⁰ The problem is that law enforcers and courts often withhold protection when it is most crucially needed out of respect for family privacy.¹¹¹

2.3.3. Effect of Marital Rape

It is often assumed that real traumatic rape has to be committed by a stranger as a onetime event.¹¹² On the contrary, since spouses have been sexually intimate, marital rape should not be considered as far less traumatic.¹¹³ Based on clinical experience with identified offenders, it makes little difference whether the victim is a wife or a stranger the dynamics of offenders are same.¹¹⁴ It is also known that injuries are just as serious in cases where women are attacked by their husbands as where they are attacked by strangers.¹¹⁵

Marital rape causes both physical and psychological problems on women's health as discussed below;

2.3.3.1. Physical Effects of Marital Rape

The physical effects of marital rape many include injuries to private organs, lacerating, soreness, bruising, torn muscles, fatigue and vomiting.¹¹⁶ Women who have been battered and raped by their husbands may suffer other physical consequences including

¹⁰⁶S. Fry Waterman, For Better or Worse: Marital Rape(1988), p.8

¹⁰⁷ Ibid, p.7

¹⁰⁸ Ibid, p.8

¹⁰⁹ ibid

¹¹⁰ibid

¹¹¹ ibid

¹¹² Mynation.net/study-report-marital/rape.htm

¹¹³ ibid

¹¹⁴S. Lees, Ruling Passion: sexual violence, reputation and the law(1997),p 121

¹¹⁵ ibid, p.111

¹¹⁶ Marital rape, Myth, Reality and need for Criminalization, S. Mishra, S. Sigh, 2003

broken bones, black eyes, bloody nose and knife wounds that occur during the sexual violence.¹¹⁷ Specific gynecological consequences of marital rape include miscarriages, stillbirth, bladder infections, infertility and the potential contraction of sexually transmitted diseases including HIV.¹¹⁸

The spotlight is, increasingly, on marital rape due to evidence of the high rate of HIV infections amongst married women, rooted in unequal power relations, including their inability to negotiate safe sex.¹¹⁹ Repeated marital rape increases their risk of infections, as well as the possibility of disability arising from the violence.¹²⁰

Marital rape is rarely treated as a crime, human rights watch has interviewed women after women across Africa and in the Caribbean, many of whom said domestic violence and spousal rape caused or contributed to their HIV infection.¹²¹ Hadija Namaganda, a Ugandan woman living with HIV, told human rights Watch that her husband routinely forced her to have unprotected sex with him and beat her viciously.¹²² Himself HIV positive, he once attacked her so violently that he bit off half of her left ear. When he lay dying of AIDS and too weak to beat her, he ordered his younger brother to do so.¹²³

Sules Kiliesa, a Ugandan widow, told human rights watch that;

“My husband would beat me to the point that he was too ashamed to take me to the doctor. He refused Even when he was HIV positive he still wanted sex. He refuse to use condom, he said he cannot eat sweet with the paper [wrapper] on.”¹²⁴

2.3.3.2. Psychological Effect of Marital Rape

Women who are raped by their partners are likely to suffer severe psychological consequences as well.¹²⁵ Some of the short-term effects of marital rape include anxiety, shock, intense fear, depression, suicidal ideation and post traumata stress.¹²⁶ Long term effect often include disordered eating, sleep problems, depression, problems

¹¹⁷ Marital rape, Myth, Reality and need for Criminalization, S. Mishra, S. Sigh, 2003

¹¹⁸ ibid

¹¹⁹ <http://laicite.wordpress.com>, July2, 2009

¹²⁰ ibid

¹²¹ ibid

¹²² ibid

¹²³ ibid

¹²⁴ ibid

¹²⁵ Marital rape, Myth, Reality and need for Criminalization, S. Mishra, S. Sigh, 2003

¹²⁶ ibid

establishing trusting relationships and increased negative feelings about themselves.¹²⁷ Most psychological effects are likely to be long lasting. Some marital rape survivors report flashbacks, sexual dysfunction, and emotional pain for years after the violence.¹²⁸ Even if marital rape has these tremendous effects, offenders of marital rape have been exempted from prosecution for centuries.

2.3.4. History of Exemption of Marital Rape

The exemption from rape prosecution granted to husbands who force their wives in to acts of sexual union by physical means is as ancient as the original definition of criminal rape, which was synonymous with that quaint phrase of biblical origin, 'Unlawful carnal knowledge'.¹²⁹ To our Biblical forefathers any carnal knowledge outside the marriage contract was by definition 'unlawful'.¹³⁰

Most legal traditions, from Humurrabi's code to ancient Jews' law and to British common law, exempted husbands from raping their wives.¹³¹ There are four major justifications for the exemption of marital rape.¹³² Accordingly, in the Biblical Roman law, a woman was the legal property of her husband, or father if unmarried.¹³³ The feudal doctrine of convertures stipulated that a woman's independent legal identity was consolidated or subsumed in to that of her husband, holding the married couple as one at law.¹³⁴ Moreover, the reluctance of courts and law enforcement to interfere with private matters within marriage; and lastly, as sir Matthew Hale, the chief justice in seventieth century England, proposed, marriage granted a wife's ongoing and unbreakable consent to sexual intercourse.¹³⁵ The courts and society in general were extremely reluctant to acknowledge that rape of spouse was the same criminal violation as rape of a stranger and deserve equal (or perhaps more sever) punishment.¹³⁶

¹²⁷ Marital rape, Myth, Reality and need for Criminalization, S. Mishra, S. Sigh, 2003

¹²⁸ ibid

¹²⁹ ibid

¹³⁰ ibid

¹³¹ S. Lees, Ruling Passion: sexual violence, reputation and the law(1997),p113

¹³² S. Fry Waterman, For Better or Worse: Marital Rape(1988),p. 6

¹³³ ibid

¹³⁴ ibid

¹³⁵ S. Fry Waterman, For Better or Worse: Marital Rape(1988), p. 6

¹³⁶ ibid

In the 18th C Black stone put forth the unities theory, which viewed the husband and wife as becoming one on marriage.¹³⁷ According to this theory women lost their own civil identities in marriage and they were subsequently viewed as their husband's property.¹³⁸ In Black stone's commentaries on the law of England (1965), he wrote, husband and wife are legally one person.¹³⁹ The legal existence of the wife is suspended during marriage and incorporated in to that of the husband.¹⁴⁰

During the same period, rape was considered a crime against another man's property rather than a violation against women's body and personal integrity.¹⁴¹ As a result, common law deflate that it was impossible for husbands to steal (i.e. rape) their own property (i.e. wives).¹⁴² Thus, marital rape was considered a legal impossibility.¹⁴³

At that time the law of rape evolved to protect the theft of female sexual property, not to protect women themselves.¹⁴⁴ Under the law wives could not own property and enter into contracts, as marriage created a 'unity' in which the husband was supreme and the wife invisible.¹⁴⁵ Rape violated not her bodily integrity, but the patriarchal ownership of her sexuality.¹⁴⁶ Therefore, it was an extension of the historical domination and control of husbands over wives.¹⁴⁷

Furthermore, historically, many cultures have had a concept of spouses' conjugal right to sexual intercourse with each other.¹⁴⁸ As a result prosecution of marital rape in general is hard, primarily because the question of consent is clouded by societal belief about marriage.¹⁴⁹ Not surprisingly, thus, married women were never the subject of rape laws.¹⁵⁰ Law bestowed an absolute immunity on the husband in respect of his wife, solely on the basis of the marital relation.¹⁵¹

¹³⁷ <http://webstore.ebc.india.com> February 2005

¹³⁸ *ibid*

¹³⁹ *ibid*

¹⁴⁰ *ibid*

¹⁴¹ Mynation.net/study-report-marital/rape.htm

¹⁴² *ibid*

¹⁴³ *ibid*

¹⁴⁴ *ibid*

¹⁴⁵ *ibid*

¹⁴⁶ *ibid*

¹⁴⁷ *ibid*

¹⁴⁸ <http://www.tribune242.com>

¹⁴⁹ <http://www.tribune242.com>

¹⁵⁰ Mynation.net/study-report-marital/rape.htm

¹⁵¹ *ibid*

The first documented legal statement regarding marital rape occurred in 1736.¹⁵² At that time, Sir Matthew Hale, who was a chief justice in England, published the following in the history of the pleas of the crown;

*“ ..but the husband cannot be guilty of 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 husband, which she cannot retract.”*¹⁵³

This statement came to be known as the Lord Hale Doctrine and represented a common law marital rape exemption, under which husbands could not be accused of committing the crime of rape against their wives.¹⁵⁴ Instead of basing his doctrine on legal arguments, however, Lord Hale depended solely on the theory of irrevocable consent to justify the marital rape exemption.¹⁵⁵

For over 250 years this statement alone served as a justification for spousal immunity involving rape charges, and was the origin for judicial recognition of marital rape exemption in United States.¹⁵⁶ It also served to maintain the position of men as dominators and women as their property.¹⁵⁷ Hale's statement has since been criticized on the basis that Hale cited no authority for this statement, and because in actuality the common law does not support an absolute spousal exemption.¹⁵⁸

As stated above Hale's statement was not supported by any judicial authority but was believed to be a logical consequence of the law of marriage and rape is understood at the time.¹⁵⁹ Hale's statement was not law, common or otherwise.¹⁶⁰ At best it was Hale's pronouncement of what he observed to be custom in 17th century England.¹⁶¹ Nonetheless, Hale's statement has traditionally been accepted as the origin for the marital rape exemption.¹⁶² However, one of the opposition to Hale's statement was the revolution started with women activists in America raising their voices in 1970s

¹⁵² S. Lees, Ruling Passion: sexual violence, reputation and the law(1997), p117

¹⁵³ *ibid*

¹⁵⁴ Mynation.net/study-report-marital/rape.htm

¹⁵⁵ *ibid*

¹⁵⁶ S. Fry Waterman, For Better or Worse: Marital Rape(1988),p.2

¹⁵⁷ *Ibid*, p.2

¹⁵⁸ *Ibid*, p.2

¹⁵⁹ <http://www.tribune242.com>

¹⁶⁰ S. Fry Waterman, For Better or Worse: Marital Rape(1988),p.2

¹⁶¹ S. Fry Waterman, For Better or Worse: Marital Rape(1988),p. 2

¹⁶² *ibid*, p.3

for elimination of marital rape exemption clause and extension of guarantee of equal protection to women.¹⁶³

The decision that was upheld by the House of Lords on 23 October 1991, emphasized Hale's statement no longer represented the law and that the time has now arrived when the law should declare that a rapist remains a rapist and is subjected to the criminal law, irrespective of his relationship with his victim.¹⁶⁴

2.3.5. Countries which have Abolished Marital Rape Exemption

In 2006, it was estimated that marital rape could be prosecuted in at least 104 countries.¹⁶⁵ Many western countries have recognized that marital rape is contrary to human rights and outlawed it mostly in the 1990s.¹⁶⁶ Some developing countries outlawed marital rape in the 2000s.¹⁶⁷ Yet in many countries marital rape is either legal or illegal but widely tolerated as the husbands' prerogative.¹⁶⁸

In most countries which have abolition the marital rape exemption; their statutes contain a partial exemption.¹⁶⁹ For example, in eight countries, the exemption applies unless the parties are separated under a court order¹⁷⁰ while in three countries, the husband cannot be prosecuted for the rape of his wife unless the parties are living apart and one spouse has filed a petition for divorce, separation, annulment, or separate maintenance.¹⁷¹ In other countries, the exemption ends when the parties are living apart or one spouse has initiated legal proceeding at the time of rape.¹⁷² Still in other countries, as long as the parties were living apart at the time of the incident, the husband can be prosecuted in those countries, no court order or separation agreement is required.¹⁷³

England abolished marital rape exemption in 1991.¹⁷⁴ By 1993 marital rape become a crime in all fifty states of the United States of America under at least one section of the

¹⁶³S. Fry Waterman, For Better or Worse: Marital Rape(1988),p.3

¹⁶⁴ www.wikigender.org

¹⁶⁵ S. Lees, Ruling Passion: sexual violence, reputation and the law(1997),p 117

¹⁶⁶ibid

¹⁶⁷ ibid

¹⁶⁸ ibid

¹⁶⁹ S. Fry Waterman, For Better or Worse: Marital Rape(1988),p.9

¹⁷⁰ibid

¹⁷¹ibid

¹⁷²ibid

¹⁷³ S. Fry Waterman, For Better or Worse: Marital Rape(1988),p.9-10

¹⁷⁴ Marital rape, Myth, Reality and need for Criminalization, S. Mishra, S. Sigh, 2003

sexual offence codes.¹⁷⁵ In thirty three states of USA there are exemptions given to husbands from rape prosecution when his wife is most venerable (e.g. when she is mentally or physically impaired unconscious or asleep) and is legally unable to consent.¹⁷⁶ But some states still do not consider it as a serious as other forms of rape.¹⁷⁷ Only eighteen states have laws that make no distinction between marital rape and stranger rape. These states have no marital rape exceptions.¹⁷⁸

In general, over the past decade, marital rape has become a controversial legal issue.¹⁷⁹ The fact is that in most countries, it is legal for a man to rape his wife.¹⁸⁰ Although progress has been made in some countries in the form of legislative or judicial action abolishing the spousal exemption from rape statutes, the issue is far from resolved.¹⁸¹ Considering the magnitude of studies which have demonstrated marital rape is in fact a common phenomenon in most families, it becomes apparent that the issue needs to be confronted and given political priority until every country is willing to recognize marital rape as criminal act.¹⁸²

¹⁷⁵ Marital rape, Myth, Reality and need for Criminalization, S. Mishra, S. Sigh, 2003

¹⁷⁶ Sheri and Bob Stritof, Is marital rape a crime? About.com guide

¹⁷⁷ ibid

¹⁷⁸ ibid

¹⁷⁹ Sexual Assault among intimates: Frequency, Consequence & treatment, Dr. M. Judith and Dr. M. Ann, October 2005

¹⁸⁰ ibid

¹⁸¹ ibid

¹⁸² ibid

CHAPTER THREE

3. Marital rape as a Human Rights Violation

All human rights are universal, indivisible, interdependent and interrelated.¹⁸³ The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be born in mind.¹⁸⁴

The human rights of women and girl child are inalienable, integral and indivisible parts of universal human rights.¹⁸⁵ As a result all forms of discrimination against women, sexual exploitation and gender based violence, should be eliminated.¹⁸⁶ Women's rights must be addressed in both the public and private spheres of society, in particular in the family.¹⁸⁷

The issue of women's right has not been sufficiently visible in the human rights discourse, in human rights institutions and practices.¹⁸⁸ Even if the issue of the advancement of women's rights has concerned the UN since the organ's founding.¹⁸⁹ Yet the alarming global dimensions of female targeted violence were not explicitly acknowledged by international community until December 1993, when the UN General Assembly adopted the Declaration on the Elimination of Violence against Women (DEVAW).¹⁹⁰ Until that point, most governments tended to regard violence against women largely as a private matter between individuals, and not as pervasive human rights problem requiring state intervention.¹⁹¹

¹⁸³J. Symonides, Human rights: concept and standards(Ed. 2000), p.17

¹⁸⁴ibid

¹⁸⁵G. Alfredsson and K. Tomasevski, A Thematic Guide to Documentation on the Human rights of Women. (1995), P. 51

¹⁸⁶ibid

¹⁸⁷ibid

¹⁸⁸Ibidp.49

¹⁸⁹women and violence, the work of the special Reporter, published by the United Nations Department of Public Information, DPI/1772/HR-february 1996

¹⁹⁰ibid

¹⁹¹ibid

Violence against women is exacerbated by social pressures, notably the shame of denouncing certain acts that have been perpetrated against women.¹⁹² In addition women's lack of access to legal information, aid or protection, the lack of laws that effectively prohibit violence against women, failure to reform existing laws, inadequate efforts on the part of public authorities to promote awareness of and enforce existing laws, and the absence of educational and other means to address the cause and consequence of violence are also causes of violence against women.¹⁹³

From various types of violence on the rights of women, specifically married ones, marital rape is one of them. Exemption of marital rape contradicts with the rights of women because, as stated in DEVAW, marital rape is included under violence against women. The marital rape exemption had deep roots in the legal regimes.¹⁹⁴ It was understood, explained, and defended in the context of a wide array of marital status; rules that conclusively inferred consent from a person's initial agreement to marry.¹⁹⁵

Excavating the nineteenth century contest over the law's, treatment of marital rape restores a significant chapter in the history of the first woman's rights movement in the United States, offering a new perspective on the commitments and effectiveness of that movement.¹⁹⁶ Historians have often characterized the first woman's rights movement as narrowly intent on securing gender neutral rights of access to the public spheres, with suffrage defined as the movement's overriding and most radical goal.¹⁹⁷

Yet, leading nineteenth century feminists argued in public vociferously and systematically that economic and political equality, including even the vote would prove hollow if women did not win the right to set the terms of marital intercourse.¹⁹⁸ Indeed feminists explained a woman's lack of control over her person as the key foundation of her subordination.¹⁹⁹ This claim was acutely gender specific, grounded in the argument that women needed to control the terms of marital intercourse in order to regulate the portion of their lives they would have to devote to raising children.²⁰⁰ Convinced that

¹⁹²S. Fry Waterman, For Better or Worse: Marital Rape(1988), p.40

¹⁹³ *ibid*

¹⁹⁴ *ibid*

¹⁹⁵ *ibid*

¹⁹⁶ *ibid*

¹⁹⁷ *ibid*

¹⁹⁸ *ibid*

¹⁹⁹ *ibid*

²⁰⁰ *ibid*

women's subordination was ultimately rooted in the structure of marital relations, feminists demanded both the right to refuse and viable socio-economic alternatives to submission.²⁰¹

This agenda, admittedly radical, was neither dismissed nor ignored in the latter half of the nineteenth century, although it never fully transformed customary norms, the popular prescriptive (advice and instructional) literature on marriage constants strong evidence that feminist critiques of marital rape resonated with evolving societal understandings of desirable martial conduct.²⁰²

Very soon after nineteenth century feminists began speaking about a wife's right to her own person, mainstream prescriptive authors began to offer extended analyses of the harm that marital rape inflicted.²⁰³ This prescriptive literature, however, did not challenge a husband's legal right to control marital intercourse.²⁰⁴ It marshaled, instead, an array of moral, physiological, and strategic arguments designed to convince husbands to voluntarily cede discretion over sex to their wives, promising that the concession would serve the interests of husband as well as wives.²⁰⁵

Feminist critiques of marital rape resonated with evolving societal understandings of desirable marital conduct that unlawful sexual intercourse could be applied both outside and inside the bounds of marriage.²⁰⁶ One of the main achievements of feminist writers has been to highlight the extent of physical and sexual violence against women in home by their partners.²⁰⁷

Marital rape violates the fundamental human rights of women, such as the right to dignity and body integrity, socio-economic rights, right to health, reproductive right and the right to be free from coercion are some of them. These rights are discussed in this chapter.

²⁰¹ S. Fry Waterman, For Better or Worse: Marital Rape(1988), p.40

²⁰² *ibid*

²⁰³ *ibid*

²⁰⁴ *ibid*

²⁰⁵ *ibid*

²⁰⁶ *ibid*

²⁰⁷ S.Johns, Understanding violent crime(2000), p.89

3.1. Right to Dignity and Body Integrity

The human body, whether that of woman or man is inviolable and respect for it is a fundamental element of human dignity and freedom.²⁰⁸ Equality between women and men means equality in their dignity and worth as human being as well as equality in their rights, opportunities and responsibilities.²⁰⁹ The independent values, which can all fall under the rubric of human dignity, are the demands related to respect, power, enlightenment, well being, health, skill, affection and rectitude.²¹⁰

Marital rape implies lack of consent by one party and the lack to have a say in mutual acts of which marriage gives, as a right, to the spouses is contradictory to the right of a person and leads to violation of one's dignity, and in particular to sexual acts, to trespass of body integrity. Critics and feminists alien emphatically maintain that a marriage license should never be viewed as a license for a husband to have any sexual rights over his wife and that a married woman has the same right to control her own body as an unmarried woman.²¹¹

Accordingly, exempting marital rape violates women's right to dignity and body integrity. It also violates their right to equal protection of the law because exempting marital rape implies that married women do not have equal rights to unmarried women and men to be protected from rape.

3.2. Socio-Economic Rights

Marital rape can seriously impact women's ability to participate in socio-economic activities.²¹² It can drive women into poverty by preventing them from engaging in educational and economic activities which in turn renders them vulnerable to further violence as their dependency increases.²¹³ Women with formal sector jobs may lose their posts due to absenteeism resulting from impacts of the rape fear that others may find out and ostracize them while those in the informal sector, such as traders may find

²⁰⁸ G, Alfredsson and K. Tomasevski, A Thematic Guide to Documentation on the Human rights of Women(1995) ,P.15

²⁰⁹ibid P.14

²¹⁰ J. Symonides, Human rights: concept and standards. (Ed.2000), p.54

²¹¹ ibid

²¹² ibid

²¹³ ibid

that the physical and physiological impact of the rape limits their ability to generate income.²¹⁴

In the preamble of the ICESCR it is stated that rights in the covenant are drive from inherent dignity of the human person. This is crucial because in order to provide women a life with dignity and self determination it is important that women have inalienable and equal economic rights (e.g. right to agricultural land, housing, other resources and property).²¹⁵

Laws have for centuries embodied the notion of the ' head of family '²¹⁶ or ' bread winner, ' and this role still pertains to men.²¹⁷ Since a woman's access to property usually hinges on her relationship to a man when the relationship ends, the woman stands a good chance of losing her home and other properties.²¹⁸ This discrimination stands from custom that favor men for inheritance and property ownership.²¹⁹ In cases where men are entitle the power of the head of the family they also get the power to control the family, in which, they control and manage the family property, this make woman powerless and dependent on their husbands. It also makes them vulnerable to abuses at their homes. This is in violation of article 23(4) of ICCPR. It also violates article 3 of ICESCR which states men and women have equal rights in the enjoyment of all economic, social and cultural rights.

Married women may still be required to have the permission of their husbands to enter employment in some countries.²²⁰ And they are not considered independent or equal (either to men or unmarried women) in migration or citizenship.²²¹ The Human Rights Committee therefore, affirmed in 1989 that governments are required to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at dissolution, and added that it is a positive duty of the state to make certain that spouses

²¹⁴ J. Symonides, Human rights: concept and standards. (Ed.2000), p.54

²¹⁵ G. Alfredsson and K. Tomasevski, A Thematic Guide to Documentation on the Human rights of Women(1995), p.49

²¹⁶ Until it was corrected by article 66 of the Revised Family Code of 2000, the Ethiopian Civil Code in article 135 gave the power of the head of the family to the husbands.

²¹⁷ G. Alfredsson and K. Tomasevski, A Thematic Guide to Documentation on the Human rights of Women(1995), P. 234

²¹⁸ <http://dawn.thot.net/alello/cv/>

²¹⁹ *ibid*

²²⁰ G. Alfredsson and K. Tomasevski A Thematic Guide to Documentation on the Human rights of Women. (1995),p.241

²²¹ *ibid*

have equal rights.²²² Because gender discrimination jeopardizes all human rights and persistence of unequal rights in marriage is addressed as a breach of governmental human rights obligation.²²³

3.3. Right to Health

According to the WHO 'health is a state of complete physical, mental and social well being and not merely the absence of disease or infirmity.'²²⁴ As stated in chapter two marital rape cause severe physical as well as physiological problem to the victim's health. This is against the right to highest attainable standard of physical and mental health. By exempting marital rape from prosecution the government is cooperating with husbands in the violation of women's right to highest attainable standard of health which is violation of article 12(1) of the ICESCR.

Martially raped women experience more physical and health problems and have a higher occurrence of depression, drug and alcohol abuse, and suicide attempts than do women who are not.²²⁵ They also use health care services more often.²²⁶

Raquel Kennedy Bergen, PhD, stated in a research paper entitled 'Marital Rapes New Research and Directions' that research indicates that woman who are raped by their partners are likely to experiences multiple assaults and often suffer long term physical and emotional trauma.²²⁷

3.4. Reproduction Right

The marital rape exemption allows a husband to impregnate his wife against her will in denial of her reproductive freedom.²²⁸ The marital exemption impermissibly burdens a woman's decision to use sexual abstinence as a method of contraception.²²⁹ By this, marital rape prevents women from being able to take control of their own sexual and

²²² G. Alfredsson and K. Tomasevski A Thematic Guide to Documentation on the Human rights of Women. (1995),p.240

²²³ ibid P.240-241

²²⁴ F.Norton. The role of the law in confronting marital rape (a case of Ghana), 30 October, 2009

²²⁵ P. Rath, marital rape and the Indian Legal scenario. India Law Journal, 2007

²²⁶ Ibid

²²⁷ WWW.Wellesley. Edu/WCW/WRN 2000

²²⁸ S. Fry Waterman, For Better or Worse: Marital Rape(1988), p. 15

²²⁹ Ibid

reproductive health.²³⁰ Every woman has the right to control her own body and to make decisions about having sex, using birth control, becoming pregnant and have children.²³¹ She does not lose these rights if she marries.²³²

Statutes which contain a marital rape exemption provide protection of such rights as the ability to control procreation for non-spouses but deny this same protection to a wife by allowing non-consensual sexual acts to occur.²³³ This is a violation of the right to be free from discrimination; married women are being discriminated from enjoying the right to control their procreation because they are married. It is also a violation of article 16(e) of CEDAW which entitles both the husband and the wife equal rights to decide freely and responsibly on the number and spacing of their children.

3.5. Right to be Free from Coercion

The right to be free from coercion and violence in relation to sex is a human right which is entitled to all human beings equally. Exemption of marital rape violates these rights by denying married women from entertaining such protection.

It is presumed marriage gives green light to sex.²³⁴ But such presumed “green lights” to sex are not concrete there always exists a partner’s right to give all “red lights” at any time he/she wishes.²³⁵ Regardless of whether consent is presumed, as long as you refuse someone’s requests to stop doing something to them you are committing an offence against his or her personal sovereignty.²³⁶ And by retaining the marital rape exemption, we are effectively saying that marriage switches on a permanent “green light” on the person’s right to say “No”²³⁷ which in its hand means denial of a free will by the women.

Ms. Wanjiku, a woman who is a resident of one village in Kenya, said, “women need to have right to say ‘no’ but men here have the authority and women have no power at all.”²³⁸ The women with Ms. Wanjiku said the consequences for refusing sex were harsh and immediate. Ms.Wanjiku said;

²³⁰ Marital rape and the presumption of consent, Feminism v patriarchy, Singapore, July2, 2009

²³¹ ibid

²³² Ibid

²³³ S. Fry Waterman, For Better or Worse: Marital Rape(1988),P.17

²³⁴ Mynation.net/study-report-marital/rape.htm

²³⁵ ibid

²³⁶ ibid

²³⁷ Ibid

²³⁸ ibid

*“He will kick you out of the house; send you to the bush to spend the whole night outside with the kids. He will burn your clothes, kill your chicken, eat them and sell your goats.”*²³⁹

Exemption of marital rape allows coercion of women in to sexual intercourse without their consent this is against article 1 of DEVAW which includes coercion under violation of women’s rights.

²³⁹ Mynation.net/study-report-marital/rape.htm

CHAPTER FOUR

4. Human Rights Laws Dealing with the Rights of Women

Currently most international, regional and national laws incorporate the rights of women including their right to be free from violence. By dealing with violence against women these instruments indirectly address marital rape, since it is part of violence; some of these documents will be dealt with in this chapter. From national laws the Ethiopian constitution will be discussed.

4.1. International Human Rights Instruments

All human beings are equal irrespective of their economic, social, cultural and other status as a result they are entitled to equal rights. Because of culture women were not entitled to equal human rights with men and were exposed to different types of violence. The UN specifically connected violence against women to socio-cultural norms that reinforce and suggest an acceptance, justification and tolerance for practices that should not and cannot be tolerated any longer.²⁴⁰ The UN has adopted various declarations and conventions which entitle women equal rights with men. Some of these international instruments directly and indirectly dealing with marital rape are discussed below;

4.1.1. Declaration on the Elimination of all forms of Violence against Women (DEVAW)

As human rights developed, the belief of marital right to sexual relations had become less widely spread as a result the United Nations adopted the Declaration of the Elimination of Violence against Women in December 1993.²⁴¹ The Declaration considers marital rape as human rights violation.²⁴² In 1995 all countries represented at the UN's women's conference voted for a resolution, which held that wives have the right to refuse the sexual demands of their husbands.²⁴³ Since it is a Declaration, which legally speaking is not binding, however, it has political and moral force.²⁴⁴

²⁴⁰ <http://www.timesplus.co.UK>

²⁴¹ <http://news.jstor.org>

²⁴² *ibid*

²⁴³ W. Benedek, E. M.Kisaky and G. Oberleither, human rights of women, international instruments and African experience(2002),p.12

²⁴⁴ *ibid*

In Article (2) of DEVAW, violence against women shall be understood to encompass, but not be limited to, the following:

- A. Physical, sexual and psychological violence occurring in the 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 related to exploitation,
- B. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- C. Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.

In this article marital rape is explicitly included in the definition of violence against women.²⁴⁵ Emphasis on this provision is not meant to tantalize, but to give the victim and not the criminal, the benefit of doubt.²⁴⁶

4.1.2. Convention on the Elimination of all forms of Discrimination against Women (CEDAW)

UN adopted CEDAW in December 18, 1979, it is also known as treaty for the rights of women or the women's convention, it was entered in to force in September 3, 1981.²⁴⁷ CEDAW was adopted by the UN General Assembly as an international bill of rights for women.²⁴⁸ The Convention is an international legal tool which comes into force in the countries that have signed it, with the exception being the reservations that have been put on it.²⁴⁹ Governments are required to report progress periodically, shadow reports are also put together as an alternative report on progress, and governments have to act upon the recommendations put to them by the CEDAW committee.²⁵⁰

²⁴⁵ P. Rath., marital rape and the Indian Legal scenario, India Law Journal ,2007

²⁴⁶ *ibid*

²⁴⁷ CEDAW, p.1

²⁴⁸ [http://www.arrow.org.my/home/omage/publications/CEDAW/country%](http://www.arrow.org.my/home/omage/publications/CEDAW/country%20)

²⁴⁹ *ibid*

²⁵⁰ *ibid*

General Recommendation 19 was adopted in 1992 by the CEDAW committee as a general recommendation and comments which detailed how CEDAW covered violence against women as well as how governments should approach its elimination.²⁵¹

According to General Recommendation 19 of CEDAW, in article one of the CEDAW definition of discrimination includes gender based violence that is, directed against a woman because she is a woman or that affects women disproportionately.²⁵² It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.²⁵³ This includes violations where the perpetrators are private individuals.²⁵⁴ The CEDAW committee has also noted that women's human rights to life and physical and mental integrity cannot be suspended by other rights, including the rights to property and the right to privacy.²⁵⁵ And gender based violence may breach specific provisions of the convention, regardless of whether those provisions expressly mention violence.²⁵⁶

Art 2 of CEDAW requires that, states parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women and to this end undertakes: to adopt appropriate legislative and other measures, including sanctions, where appropriate legislative prohibiting all discrimination against women, and to take appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.²⁵⁷ According to this article states are required to draft laws against marital rape because it is a violation of the rights of women.

Moreover, as stated in article 1, discrimination is exclusion made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status and exemption of marital rape is discriminating married women from getting a remedy for the violation of their rights because they are married. Exemption of marital rape violates this article because it

²⁵¹F.Norton. The role of the law in confronting marital rape (a case of Ghana), 30 October, 2009

²⁵² *ibid*

²⁵³ *ibid*

²⁵⁴ *ibid*

²⁵⁵ *ibid*

²⁵⁶G. Alfredsson and K. Tomasevski, A Thematic Guide to Documentation on the Human rights of Women(1995), p.313

²⁵⁷ F.Norton. The role of the law in confronting marital rape (a case of Ghana), 30 October, 2009

discriminate married women. Ethiopia has ratified CEDAW, but the country has not abolished the marital rape exemption yet which impedes citizens from enjoying the rights given under international law as a result of the negligence of the government to fulfill the obligation rendered by CEDAW.

Article 5 requires states to modify social and cultural patterns of conduct to eliminate prejudices and customary and all other practices which are based on ideas of inferiority or superiority of either of the sexes and pursuant to article 16(1) of the convention, state parties are required to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Accordingly, state parties who signed this instrument are expected to create conducive environment so as citizens can entertain such rights.

CEDAW encourages states to report on the extent, causes and effects of violence, and on the measures they have taken to counter it, non-governmental organizations (NGOs) can also submit supplementary reports.²⁵⁸ The system has had some successes and faced many challenges.²⁵⁹

4.1.3. International Covenant on Civil and Political Rights (ICCPR)

ICCPR was adopted by the UN General Assembly in December 16, 1966, however, it came in to force in March 23, 1976.²⁶⁰

In article 7 of ICCPR it is stated that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,” according to this article women have a right to be free from marital rape because it is inhuman, degrading and cruel.

According to article 23(4) states are required to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

Art 26 of ICCPR states all persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against

²⁵⁸ www.un.org/africarenewal

²⁵⁹ *ibid*

²⁶⁰ *ibid*

discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In light of this article, married women have equal rights with men as well as with single women therefore; not criminalizing marital rape is discrimination of married women because it excludes them from equal protection of the law as a result of their marital status.

4.1.4. International Covenant on Economic, Social and Cultural Rights (ICESCR)

ICESCR was adopted by the UN general assembly in December 16, 1966 however, it came in to force in January 3, 1976.²⁶¹

Article 12(1) state that, state parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. As stated in chapter two marital rape causes both physical and psychological health problems. As a result protecting women from marital rape also decreases threats to women's health.

4.2. Regional Human Rights Instruments

The UN charter allows member states to set up regional systems to promote and protect human rights different regional arrangements have been established; the African Charter in Human and Peoples' Right and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa are some of them. In this section the writer discusses both.

4.2.1. The African Charter on Human and Peoples' Rights (ACHPR)

The African Charter was adopted at Nairobi on 26 June 1981 and entered in to force on 21 October 1986. The charter, which is also ratified by Ethiopia, states in article 60, the African Commission on Human and Peoples' Rights is required to draw inspiration from international laws on human and peoples' rights. As a result in article 18(3), states are expected to ensure the elimination of discrimination against women and also to ensure the protection of their rights as stipulated in international Declarations and Conventions. The charter has enshrined the non discrimination of people from benefiting what it provides, under no circumstance, in its article 2. In addition, the

²⁶¹D. Shiman, Teaching human rights(1993), p.6

inviolability of human beings is also recognized by the charter in its article 4 which entails, entitlement of respect for the life and integrity of a person.

4.2.2. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa is also known as the Maputo protocol. It was adopted in 2003 and came to force in 2005. The main aim of the protocol is to protect the rights of women in Africa. The majority of the African states have ratified the protocol, however; Ethiopia is one of the few countries that have not ratified the protocol.

Article 2 of the protocol requires states to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. And also obliges states to include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application.

It also states, state parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices 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 women and men.

In article 3 the protocol entitles women the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights. This includes the right to respect as a person and to the free development of her personality, prohibition of any exploitation or degradation of women. It also requires state parties to adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

In article 4 it obligates state Parties shall take appropriate and effective measures to enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public and adopt

legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women and also punish the perpetrators of violence against women and implement programs for the rehabilitation of women victims.

Marital rape falls under the above stated articles as it is a violation of the right of women to dignity and exemption of marital rape is discrimination. The protocol also entails governments to enact laws which criminalize violence against women in which marital rape is included because it is part of violence women face at their homes. The protocol entitles women in Africa civil and political as well as economic, social and cultural rights which are in line with international human rights.²⁶²

4.3. National Human Rights Laws

4.3.1. The Constitution of the Federal Democratic Republic of Ethiopia

The Constitution which is the supreme law of the country declares that international human rights instruments which are ratified by Ethiopia will be an integral part of the law of the land.²⁶³ In particular chapter three of the constitution which provides for human rights and fundamental freedoms will be interpreted in conformity with international human rights instruments to which Ethiopia is a party.²⁶⁴

Ethiopia has ratified the ICCPR, ICESCR, CEDAW and other international human rights instruments.²⁶⁵ These instruments have direct application to the rights of women and hence the constitutional provision which automatically makes part of the law of the land any ratified international instrument will have a significant importance in broadening the normative framework for the protection and promotion of the rights of women at the national level.

²⁶² Most violence against women in Africa occurs because of lack of economic independence and power of women. Therefore, ratifying the protocol to the African charter on human and peoples' rights on the rights of women in Africa will be one step ahead in the protection of the rights of women. As stated above Ethiopia has not ratified this protocol yet, as the country has already ratified ICCPR and ICESCR and these instruments are included in the FDRE constitution, most of the provisions of the protocol are consistent with the constitution of the country. Therefore, ratifying the protocol will bring change in the status of Women in Ethiopia; it may also help to alleviate discrimination and violence against women in Ethiopia. But not ratifying the protocol excludes them from the enjoyment of various rights mentioned in the protocol which are not included in the national laws.

²⁶³ Article 9(4) of FDRE constitution

²⁶⁴ The FDRE constitution article 13(1)

²⁶⁵ <http://www.umn.edu/humanrts/research/ratification-Ethiopia.htm>

However, despite the progressive and modern nature of the constitution the application of international human rights instruments or treaties is constrained by lack of legal activism and reluctance based on procedural grounds.²⁶⁶ But once the international treaty is ratified by the relevant government organ, the treaty becomes an integral part of the law of the land by virtue of the constitutional provision.²⁶⁷

Article 35(2) states

“Women have equal rights with men in marriage”.

And article 34(1) of the constitution states;

“Men and women are entitled to equal rights in entering marriage, during marriage and at the time of divorce”.

These two articles state that men and women have equal rights in marriage therefore; men’s forcing their wives in to sexual intercourse against their will is a violation of these articles and is against the principle of equality. The constitution in article 25 also states that no person may be discriminated against on grounds of sex or social status. According to this article there should be no discrimination on women based on their marital status but exemption of marital rape contradicts with this article because by exemption of marital rape married women are being discriminated based on their marital status. Marital rape also violates the right to equal protection of the law for the reason that by exemption of marital rape women are hindered from equal protection of the law for the violation of their rights because they are married.

In article 16 it is stated *“everyone has the right to protection against bodily harm”*. In article 24(1) it is also stated that, *“everyone has the right to respect for his/her dignity...”* Marital rape causes bodily harm and as stated in chapter three it is a violation of the women’s right to dignity and tolerating marital rape also opposes these articles.

According to article 35(4) the state shall enforce the right of women to eliminate the influence of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited. Marital rape causes both mental and physical

²⁶⁶<http://www.umn.edu/humanrts/research/ratification-Ethiopia.htm>

²⁶⁷The FDRE constitution, Article 9(4)

harm to women as a result it falls under this category. However, since the exemption is not abolished this article is violated.

CHAPTER FIVE

5. Marital Rape, ‘the Hidden’ Women’s Human Rights Abuse (The Case of Hawassa City)

The FDRE government has made various developments in protecting the rights of women in Ethiopia; some of these developments include amendment of the Criminal Code of 1960 in 2005 which criminalized several harmful traditional practices, such as abduction (art. 587), female circumcision and other harmful practices (art. 565, 566 and 567), early and forced marriage (art. 648), bigamy (art. 650) and rape (620). It also criminalized domestic violence (art. 664).

Moreover, the recent adoption and amendments made on several laws and policies aimed at improving respect for women’s rights, including the Revised Family Code in 2000. The application of the Revised Family Code is limited to Addis Ababa and Dire Dawa and other regions are allowed to ratify their own Family Code, as (art.52(1)) of the FDRE Constitution entitles what is not specifically given to the Federal government is given to the regional states. Accordingly, Southern Nations Nationalities and People Regional State is one of the regions which have ratified their own family codes. Under SNNPRS Family Code except in cases put in (art. 17(2)) the minimum age for marriage is raised to 18 years for both men and women (art. 17). In article 58(1) the husband and the wife have equal rights in the administration of the family; this article is advancement to the civil code, which entitles the husbands the power of the head of the family. It also put additional ground for divorce, by mutual consent (art. 86). These articles are in line with the articles of the Revised Family Code (art. 7), (art.66) and (art. 77) respectively. These are among several measures taken to promote and protect human rights in general and rights of women in particular.

Despite such efforts to protect the rights of women, citizens still face various violations of women’s rights.²⁶⁸ Domestic violence is among and the highly prevalent one in Ethiopia which is also, widely, socially condoned.²⁶⁹ A study conducted by the World Bank in July 2005 concluded that 88% of rural women and 69% of urban women in

²⁶⁸ www.wikigender.org

²⁶⁹ *ibid*

Ethiopia believed their husbands had the right to beat them.²⁷⁰ Moreover, the courts do not tend to consider domestic violence as a serious justification for granting a divorce.²⁷¹

In 2005 a study on women's health and domestic violence, the WHO found that 71% of women in Ethiopia's rural areas reported beatings or other forms of violence by husbands or other intimate partners.²⁷² Abduction of women, although a criminal offence, is still considered as a legitimate way of procuring a bride (especially in southern Ethiopia).²⁷³ It is estimated that approximately 8% of married women in the country have been abducted and forced into marriage.²⁷⁴

In the meantime, despite the major activities undertaken by the government of Ethiopia to promote and protect the right of women, there are still some types of violence which are left uncovered. Among this marital rape is a good example which was not recognized under the Criminal Code of 2005. In article 620 of the criminal code 'rape is committed when a person compels a woman to submit to sexual intercourse outside wedlock by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance.' This definition clearly excludes marital rape from being considered as a crime of rape since it is committed inside wedlock.

In cases which have been recognized as crimes women have legal recourse via the police and courts, but societal norms and problems within the justice system (poor documentation, inadequate investigation and lack of special handling of cases involving women) prevent them from seeking legal redress, particularly in rural areas.²⁷⁵ Marital rape victims are not entitled even to these proceeding because, as stated earlier, it is not considered as a crime. In addition, under the traditional justice system, according to which conflict resolution takes place before Elders' Councils, women are not allowed to participate in proceedings concerning them.²⁷⁶

²⁷⁰ www.wikigender.org

²⁷¹ *ibid*

²⁷² www.un.org/africarenewal

²⁷³ *ibid*

²⁷⁴ *ibid*

²⁷⁵ *ibid*

²⁷⁶ *ibid*

As stated in chapter one, this study is limited to only the urban part of Hawassa city. The total population of women who are ever married in the city is 20,367 from which a sample size of 169 is selected by using stratified random sampling method. 169 questioners had been distributed in 27/12/2010-7/1/2011 after giving the data collectors a one day training, the data collection took place under the supervision of the researcher. Three people including the researcher were involved in data collection. The data from the questioners was analyzed by using SPSS version 13.0.

In order to show the prevalence and cause of marital rape in Hawassa city, it is necessary to see its occurrence rate in relation with demographic features like education level, economy, age, etc... Therefore, this chapter deals about the relationship between marital rape and the above stated demographic factors.

When the marital status of the 169 women who filled the questioners was assessed; 86.4% were still married, 5.9% were divorced and 7.7% were widowed;

Table 2: Summary of Marital Status of the respondents (Hawassa City, December 27, 2010-January 7, 2011).

	Frequency	Percent	Valid Percent	Cumulative Percent
Married	146	86.4	86.4	86.4
Divorced	10	5.9	5.9	92.3
Widowed	13	7.7	7.7	100.0
Total	169	100.0	100.0	

In regard to the educational status of the respondents 15.4% were illiterate, 32.0% were primary school completes 30.2% were secondary school complete, 1.8% were certificate holders, 16.6% were diploma holders and 4.1% were degree holders.

Table 3: Summary of Educational status of the respondent (Hawassa City, December 27, 2010-January 7, 2011).

	Frequency	Percent	Valid Percent	Cumulative Percent
Illiterate	26	15.4	15.4	15.4
Primary School Complete	54	32.0	32.0	47.3
Secondary School Complete	51	30.2	30.2	77.5
Certificate	3	1.8	1.8	79.3
Diploma	28	16.6	16.6	95.9
Degree and above	7	4.1	4.1	100.0
Total	169	100.0	100.0	

Concerning the occupational status of the respondents 37.3% of them were with no jobs, 20.1% were government employees, 16% were private employees and 26.6% were self employed.

Table 4: Summary of Occupation of the Respondents (Hawassa City, December 27, 2010-January 7, 2011).

	Frequency	Percent	Valid Percent	Cumulative Percent
No Job	63	37.3	37.3	37.3
Government Employee	34	20.1	20.1	57.4
Private company Employee	27	16.0	16.0	73.4
Self employed	45	26.6	26.6	100.0
Total	169	100.0	100.0	

In case of the monthly income of the respondents 33.7% were with no income, 14.8% were with income less than 150 birr, 27.2% were with income of 151-650, 18.9% were with income 651-1400 and 5.3% were with income of 1401-2350.

Table 5: Summary of Monthly Income of the Respondents (Hawassa City, December 27, 2010-January 7, 2011).

	Frequency	Percent	Valid Percent	Cumulative Percent
No	57	33.7	33.7	33.7
< 150	25	14.8	14.8	48.5
151 – 650	46	27.2	27.2	75.7
651 – 1400	32	18.9	18.9	94.7
1401 – 2350	9	5.3	5.3	100.0
Total	169	100.0	100.0	

Regarding the age of the respondents, 23.6% were in the range between the age of 18-25, 47.3% were in range between the age of 26-35, 22.4% were in the range between the age of 36-45 and 6.7% were above the age of 45.

Table 6: Summary of Age of the Respondents (Hawassa City, December 27, 2010-January 7, 2011).

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	18 - 25	39	23.1	23.6	23.6
	26 - 35	78	46.2	47.3	70.9
	36 - 45	37	21.9	22.4	93.3
	> 45	11	6.5	6.7	100.0
Total		165	97.6	100.0	
Missing System		4	2.4		
Total		169	100.0		

5.1. The Relationship between the Educational Status of Women and the Prevalence of Marital Rape

The WHO found that women with at least a secondary education were more able to negotiate greater autonomy and control of resources within marriage, have a wider range of choices in partners and are more able to choose whether and when to marry.²⁷⁷ Such capacities have often been associated with lower levels of violence in the home.²⁷⁸

Accordingly the educational status of women affects the prevalence of marital rape, as it is part of violence women face at their homes. As a result in order to show the prevalence of marital rape in relation with the educational status of women in Hawassa city, assessment has been made by the researcher. As putted below, the result clearly showed that women are victims of marital rape regardless of their educational status but the number of victims' decreases as their educational level increases. From women who are martially raped 77% of them are below high school educational level, 15.4% are illiterate and 30.8% primary school complete and 30.8% high school complete.

²⁷⁷ www.un.org/africarenewal

²⁷⁸ *ibid*

Table 7: Relationship between Occurrence of Marital Rape and Educational Status of the Respondents (Hawassa City, December 27, 2010-January 7, 2011).

		Educational status of the respondents						Total
		Illiterate	Primary School Complete	Secondary School Complete	Certificate	Diploma	Degree and above	
Occurrence of Yes Marital rape	Count	8	16	16	0	11	1	52
	Expected Count	8.0	16.6	15.7	.9	8.6	2.2	52.0
	% within occurrence of Marital rape	15.4%	30.8%	30.8%	.0%	21.2%	1.9%	100.0%
	% within Educational status of the respondents	30.8%	29.6%	31.4%	.0%	39.3%	14.3%	30.8%
	% of Total	4.7%	9.5%	9.5%	.0%	6.5%	.6%	30.8%
No	Count	18	38	35	3	17	6	117
	Expected Count	18.0	37.4	35.3	2.1	19.4	4.8	117.0
	% within occurrence of Marital rape	15.4%	32.5%	29.9%	2.6%	14.5%	5.1%	100.0%
	% within Educational status of the respondent	69.2%	70.4%	68.6%	100.0%	60.7%	85.7%	69.2%
	% of Total	10.7%	22.5%	20.7%	1.8%	10.1%	3.6%	69.2%
Total	Count	26	54	51	3	28	7	169
	Expected Count	26.0	54.0	51.0	3.0	28.0	7.0	169.0
	% within occurrence of marital rape	15.4%	32.0%	30.2%	1.8%	16.6%	4.1%	100.0%
	% within Educational status of the respondents	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
	% of Total	15.4%	32.0%	30.2%	1.8%	16.6%	4.1%	100.0%

5.2. Economic Status of Women and Prevalence of Marital Rape

Many women do not have the financial resource to leave a relationship.²⁷⁹ If a woman has children, her ability to leave will be more difficult by the added problems of moving her children with her (taking them out of school, away from friends) or abandoning her children.²⁸⁰

Although the law does not discriminate against women in matters of inheritance, in practice, due to tradition or custom, women and girl children are excluded from inheriting property.²⁸¹ In some Muslim families, male children can receive two thirds of the estate whereas females receive only one third and sons inherit family land.²⁸²

In this study out of those who have experienced marital rape 38.5% of them did not have jobs and 40.4% of them are with no income. This shows many women who are maritally raped have very low income and this results in their dependency.

²⁷⁹ www.Welleseley.Edu/WCW/WRN, 2000

²⁸⁰ *ibid*

²⁸¹ www.wikigender.org

²⁸² *ibid*

Table 8: Relationship between Occurrence of Marital Rape and Occupation of the respondents (Hawassa City, December 27, 2010-January 7, 2011).

		Occupation of the respondents				Total
		No Job	Government Employee	Private company Employee	Self employed	
Occurrence of Yes Marital rape	Count	20	11	4	17	52
	Expected Count	19.4	10.5	8.3	13.8	52.0
	% within occurrence of marital rape	38.5%	21.2%	7.7%	32.7%	100.0%
	% within Occupation of the respondents	31.7%	32.4%	14.8%	37.8%	30.8%
	% of Total	11.8%	6.5%	2.4%	10.1%	30.8%
No	Count	43	23	23	28	117
	Expected Count	43.6	23.5	18.7	31.2	117.0
	% within occurrence of marital rape	36.8%	19.7%	19.7%	23.9%	100.0%
	% within Occupation of the respondent	68.3%	67.6%	85.2%	62.2%	69.2%
	% of Total	25.4%	13.6%	13.6%	16.6%	69.2%
Total	Count	63	34	27	45	169
	Expected Count	63.0	34.0	27.0	45.0	169.0
	% within occurrence of marital rape	37.3%	20.1%	16.0%	26.6%	100.0%
	% within Occupation of the respondent	100.0%	100.0%	100.0%	100.0%	100.0%
	% of Total	37.3%	20.1%	16.0%	26.6%	100.0%

Table 9: Relationship between Occurrence of Marital Rape and Monthly Income of the Respondents (Hawassa City, December 27, 2010-January 7, 2011).

		Monthly income of the respondents					Total	
		No	< 150	151 - 650	651 - 1400	1401 - 2350		
Occurrence of Marital rape	Yes	Count	21	3	12	12	4	52
		Expected Count	17.5	7.7	14.2	9.8	2.8	52.0
		% within occurrence of marital rape	40.4%	5.8%	23.1%	23.1%	7.7%	100.0%
		% within Monthly income of the respondents	36.8%	12.0%	26.1%	37.5%	44.4%	30.8%
		% of Total	12.4%	1.8%	7.1%	7.1%	2.4%	30.8%
No		Count	36	22	34	20	5	117
		Expected Count	39.5	17.3	31.8	22.2	6.2	117.0
		% within occurrence of marital rape	30.8%	18.8%	29.1%	17.1%	4.3%	100.0%
		% within Monthly income of the respondents	63.2%	88.0%	73.9%	62.5%	55.6%	69.2%
		% of Total	21.3%	13.0%	20.1%	11.8%	3.0%	69.2%
Total		Count	57	25	46	32	9	169
		Expected Count	57.0	25.0	46.0	32.0	9.0	169.0
		% within occurrence of Marital rape	33.7%	14.8%	27.2%	18.9%	5.3%	100.0%
		% within Monthly income of the respondents	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
		% of Total	33.7%	14.8%	27.2%	18.9%	5.3%	100.0%

5.3. The Relationship between Age of Women and Prevalence of Marital Rape

In this study 50% of those who are maritally raped are in the age limit of 26-35. Members of this age limit are youth who are the working force of the country. Since marital rape harms the health of women, these women are incapacitated from utilizing their full potential and generating their income by involving in the work force. This also has a negative impact on the country by decreasing its working force.

Table 10: Relationship between Occurrence of Marital Rape and Age of the Respondents (Hawassa City, December 27, 2010-January 7, 2011).

			Age of the respondents				Total
			18 - 25	26 - 35	36 - 45	> 45	
Occurrence of Marital rape	Yes	Count	9	26	14	3	52
		Expected Count	12.3	24.6	11.7	3.5	52.0
		% within occurrence of marital rape	17.3%	50.0%	26.9%	5.8%	100.0%
		% within Age of the Respondent	23.1%	33.3%	37.8%	27.3%	31.5%
		% of Total	5.5%	15.8%	8.5%	1.8%	31.5%
	No	Count	30	52	23	8	113
		Expected Count	26.7	53.4	25.3	7.5	113.0
		% within occurrence of marital rape	26.5%	46.0%	20.4%	7.1%	100.0%
		% within Age of the Respondents	76.9%	66.7%	62.2%	72.7%	68.5%
		% of Total	18.2%	31.5%	13.9%	4.8%	68.5%
Total	Count	39	78	37	11	165	
	Expected Count	39.0	78.0	37.0	11.0	165.0	
	% within occurrence of marital rape	23.6%	47.3%	22.4%	6.7%	100.0%	
	% within Age of the Respondent	100.0%	100.0%	100.0%	100.0%	100.0%	
	% of Total	23.6%	47.3%	22.4%	6.7%	100.0%	

5.4. Domestic Violence and Marital Rape

As stated in chapter two marital rape might involve physical violence. According to this study most of the women who experience domestic violence are also highly vulnerable to marital rape. In this study 85% of women who responded they experience domestic violence are also martially raped.

In this study mostly domestic violence occurred because the respondents' spouses were drunk. Therefore, according to this study alcoholism is one of the reasons for the occurrence of marital rape as the figure shows from women who experience domestic violence because their spouses were drunk 84% of them were martially raped. Out of those who experienced physical violence because they refused to have sex with their husbands 77.8% of them are martially raped.

Table 11: Summary of Reason for the Domestic Violence (Hawassa City, December 27, 2010-January 7, 2011).

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Not Willing to have Sex	9	5.3	20.5	20.5
	not Finishing house Work	4	2.4	9.1	29.5
	Because your spouse was drunk	25	14.8	56.8	86.4
	Other	6	3.6	13.6	100.0
	Total	44	26.0	100.0	
Missing System		125	74.0		
Total		169	100.0		

Table 12: Relationship between Occurrence of Marital Rape and Occurrence of Domestic Violence (Hawassa City, December 27, 2010-January 7, 2011).

			Occurrence of domestic Violence		Total
			Yes	No	
Occurrence of Marital rape	Yes	Count	35	16	51
		Expected Count	12.8	38.2	51.0
		% within occurrence of marital rape	68.6%	31.4%	100.0%
		% within Occurrence of domestic violence	85.4%	13.1%	31.3%
		% of Total	21.5%	9.8%	31.3%
	No	Count	6	106	112
		Expected Count	28.2	83.8	112.0
		% within occurrence of marital rape	5.4%	94.6%	100.0%
		% within Occurrence of domestic violence	14.6%	86.9%	68.7%
		% of Total	3.7%	65.0%	68.7%
Total	Count	41	122	163	
	Expected Count	41.0	122.0	163.0	
	% within occurrence of marital rape	25.2%	74.8%	100.0%	
	% within Occurrence of domestic violence	100.0%	100.0%	100.0%	
	% of Total	25.2%	74.8%	100.0%	

Table 13: Relationship between Occurrence of Marital Rape and Reason for the Domestic Violence (Hawassa City, December 27, 2010-January 7, 2011).

		Reason for the domestic violence				Total	
		Not Willing to have Sex	Not Finishing house Work	Because your spouse was drunk	Other		
Occurrence of Marital rape	Yes	Count	7	4	21	5	37
	Expected Count	7.6	3.4	21.0	5.0	37.0	
	% within occurrence of marital rape	18.9%	10.8%	56.8%	13.5%	100.0%	
	% within Reason for the domestic violence	77.8%	100.0%	84.0%	83.3%	84.1%	
	% of Total	15.9%	9.1%	47.7%	11.4%	84.1%	
No	Count	2	0	4	1	7	
	Expected Count	1.4	.6	4.0	1.0	7.0	
	% within occurrence of marital rape	28.6%	.0%	57.1%	14.3%	100.0%	
	% within Reason for the domestic violence	22.2%	.0%	16.0%	16.7%	15.9%	
	% of Total	4.5%	.0%	9.1%	2.3%	15.9%	
Total	Count	9	4	25	6	44	
	Expected Count	9.0	4.0	25.0	6.0	44.0	
	% within occurrence of marital rape	20.5%	9.1%	56.8%	13.6%	100.0%	
	% within Reason for the domestic violence	100.0%	100.0%	100.0%	100.0%	100.0%	
	% of Total	20.5%	9.1%	56.8%	13.6%	100.0%	

5.5. Reasons that Force Women to Stay with Men who Rape Them

This is complicated. Many women believe it is part of their wifely duty, to have sex with their husbands, even if it is violent sex against their will.²⁸³ Many religious doctrines outline sexual acts as a “duty” for wives.²⁸⁴ In addition, it is only recently, internationally, that the law has begun to offer wives protection from their husbands’ sexual attacks.²⁸⁵

Moreover some women may not leave out of love and loyalty to the husband, which may override their pain and suffering.²⁸⁶ The decision to leave a person they care about or love can be very difficult, even when the relationship is unhealthy or violent.²⁸⁷

²⁸³ www.Wellesely.Edu/WCW/WRN, 2000

²⁸⁴ *ibid*

²⁸⁵ *ibid*

²⁸⁶ *ibid*

²⁸⁷ *ibid*

From the sample, Out of 52 women who have experienced marital rape 40 of them stated they tolerate rape by their husbands. 31.3% of the women questioned for this study purpose answered they stay with their rapist husbands because they fear for their lives, the fate of their children and also actions their husbands might take if they ask for divorce because mostly husbands who rape their wives also have a violent behavior. 15.6% of the women tolerate marital rape because they think it is their wifely duty and even if they complain there will be no solution.

Table 14: Summary of Reason for Tolerating Marital Rape (Hawassa City, December 27, 2010-January 7, 2011).

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Love	2	1.2	5.0
	Fear	11	6.5	27.5
	Thinking there is no Solution	7	4.1	17.5
	Other	12	7.1	30.0
	cultural influence	6	3.6	15.0
	Economic dependency	1	.6	2.5
	do not know what to do	1	.6	2.5
	Total	40	23.7	100.0
Missing System		129	76.3	
Total		169	100.0	

Table 15: Relationship between Occurrence of Marital Rape and Reason for Tolerating Marital Rape (Hawassa City, December 27, 2010-January 7, 2011).

		Reason for tolerating marital rape							Total
		Love	Fear	Thinking there is no Solution	other	Cultural influence	Economic dependen	Do not know what to do	
Occurrence of Marital rape	Count	2	10	5	11	3	1	0	32
	Expected Count	1.6	8.8	5.6	9.6	4.8	.8	.8	32.0
	Yes % within occurrence of marital rape	6.3%	31.3%	15.6%	34.4%	9.4%	3.1%	.0%	100.0%
	% within reason for tolerating marital rape	100.0%	90.9%	71.4%	91.7%	50.0%	100.0%	.0%	80.0%
	% of Total	5.0%	25.0%	12.5%	27.5%	7.5%	2.5%	.0%	80.0%
	No Count	0	1	2	1	3	0	1	8
	Expected Count	.4	2.2	1.4	2.4	1.2	.2	.2	8.0
	% within occurrence of marital rape	.0%	12.5%	25.0%	12.5%	37.5%	.0%	12.5%	100.0%
	% within reason for tolerating marital rape	.0%	9.1%	28.6%	8.3%	50.0%	.0%	100.0%	20.0%
	% of Total	.0%	2.5%	5.0%	2.5%	7.5%	.0%	2.5%	20.0%
Total	Count	2	11	7	12	6	1	1	40
	Expected Count	2.0	11.0	7.0	12.0	6.0	1.0	1.0	40.0
	% within occurrence of marital rape	5.0%	27.5%	17.5%	30.0%	15.0%	2.5%	2.5%	100.0%
	% within reason for tolerating marital rape	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
	% of Total	5.0%	27.5%	17.5%	30.0%	15.0%	2.5%	2.5%	100.0%

5.6. What is Women’s Attitude towards Divorce?

In this study most of the women who filled the questioners believe if they get divorce they will face hardship because they are economically dependent on their husbands and they also fear for the future of their children that they may suffer if they get divorce. Therefore, they prefer to stay with their abusive husbands rather than getting a divorce. Out of 158 women who answered the question what might happen to them if they get divorce 111 of them answered they will face hardship. From women who are marital raped 68.6% of them believe they might suffer if they get divorce.

Table 16: Summary of Result of Divorce on Respondents (Hawassa City, December 27, 2010-January 7, 2011).

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Nothing	27	16.0	17.1	17.1
	Positive	5	3.0	3.2	20.3
	Negative	111	65.7	70.3	90.5
	Other	15	8.9	9.5	100.0
	Total	158	93.5	100.0	
Missing System		11	6.5		
Total		169	100.0		

Table 17: Relationship between Occurrence of Marital Rape and Result of Divorce (Hawassa City, December 27, 2010-January 7, 2011).

			Result of divorce				Total
			Nothing	Positive	Negative	Other	
Occurrence of Marital rape	Yes	Count	6	5	35	5	51
		Expected Count	8.7	1.6	35.8	4.8	51.0
		% within occurrence of marital rape	11.8%	9.8%	68.6%	9.8%	100.0%
		% within result of divorce	22.2%	100.0%	31.5%	33.3%	32.3%
		% of Total	3.8%	3.2%	22.2%	3.2%	32.3%
	No	Count	21	0	76	10	107
		Expected Count	18.3	3.4	75.2	10.2	107.0
		% within occurrence of marital rape	19.6%	.0%	71.0%	9.3%	100.0%
		% within result of divorce	77.8%	.0%	68.5%	66.7%	67.7%
		% of Total	13.3%	.0%	48.1%	6.3%	67.7%
Total	Count	27	5	111	15	158	
	Expected Count	27.0	5.0	111.0	15.0	158.0	
	% within occurrence of marital rape	17.1%	3.2%	70.3%	9.5%	100.0%	
	% within result of divorce	100.0%	100.0%	100.0%	100.0%	100.0%	
	% of Total	17.1%	3.2%	70.3%	9.5%	100.0%	

5.7. Women's Attitude towards Marital Rape

In this study 91.7% of women think sexual intercourse with a husband should be consensual. Furthermore 72.3% of women believe marital rape is human rights violation and 68.2% of the women think marital rape is a violation of the human right to dignity. Moreover 85.1% of them think marital rape should be a crime.

Table 18: Summary of Requirement of Consent for Sexual Intercourse (Hawassa City, December 27, 2010-January 7, 2011).

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	154	91.1	91.7	91.7
	No	14	8.3	8.3	100.0
	Total	168	99.4	100.0	
Missing System		1	0.6		
Total		169	100.0		

Table 19: Summary of Violation of Human Rights (Hawassa City, December 27, 2010-January 7, 2011).

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	47	27.8	72.3	72.3
	No	18	10.7	27.7	100.0
	Total	65	38.5	100.0	
Missing System		104	61.5		
Total		169	100.0		

Table 20: Summary of Rights Violated as a Result of Marital Rape (Hawassa City, December 27, 2010-January 7, 2011).

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Dignity	45	26.6	68.2	68.2
	Control over one's own body	20	11.8	30.3	98.5
	Reproductive	1	0.6	1.5	100.0
	Total	66	39.1	100.0	
Missing System		103	60.9		
Total		169	100.0		

Table 21: Summary of respondents Considering Marital Rape as a Crime (Hawassa City, December 27, 2010-January 7, 2011).

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	143	84.6	85.1	85.1
	No	25	14.8	14.9	100.0
	Total	168	99.4	100.0	
Missing System		1	0.6		
Total		169	100.0		

5.8. Actions women take to Stop Marital Rape

According to this study 31.1% of the women who experienced marital rape took actions, 38.9% of them by reporting to family elders in order to stop this abuse. And 61.1% of them found a positive response.

Table 22: Summary of Actions Taken by Respondents to Stop Marital Rape (Hawassa City, December 27, 2010-January 7, 2011).

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	23	13.6	31.1	31.1
	No	51	30.2	68.9	100.0
	Total	74	43.8	100.0	
Missing System		95	56.2		
Total		169	100.0		

Table 23: Summary of Type of Action Taken by the respondents (Hawassa City, December 27, 2010-January 7, 2011).

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Reporting to the police	4	2.4	14.8	14.8
	Reporting to organization which advocate women's rights	2	1.2	7.4	22.2
	Reporting to the Family Arbitrators	10	5.9	37.0	59.3
	Others	11	6.5	40.7	100.0
	Total	27	16.0	100.0	
Missing System		142	84.0		
Total		169	100.0		

Table 24: Summary of Result of the Action by the respondents (Hawassa City, December 27, 2010-January 7, 2011).

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Positive	16	9.5	66.7	66.7
	Negative	2	1.2	8.3	75.0
	Others	3	1.8	12.5	87.5
	Nothing	3	1.8	12.5	100.0
	Total	24	14.2	100.0	
Missing System		145	85.8		
Total		169	100.0		

Table 25: Relationship between Occurrence of Marital Rape and Actions Taken by the respondents to Stop Marital Rape (Hawassa City, December 27, 2010-January 7, 2011).

			Actions taken to stop Marital rape		Total
			Yes	No	
Occurrence of marital rape	Yes	Count	16	35	51
		Expected Count	15.9	35.1	51.0
		% within occurrence of marital rape	31.4%	68.6%	100.0%
		% within actions taken to stop marital rape	69.6%	68.6%	68.9%
		% of Total	21.6%	47.3%	68.9%
	No	Count	7	16	23
		Expected Count	7.1	15.9	23.0
		% within occurrence of marital rape	30.4%	69.6%	100.0%
		% within actions taken to stop marital rape	30.4%	31.4%	31.1%
		% of Total	9.5%	21.6%	31.1%
Total	Count	23	51	74	
	Expected Count	23.0	51.0	74.0	
	% within occurrence of marital rape	31.1%	68.9%	100.0%	
	% within actions taken to stop marital rape	100.0%	100.0%	100.0%	
	% of Total	31.1%	68.9%	100.0%	

Table 26: Relationship between Occurrence of Marital Rape and Type of Actions taken by respondents (Hawassa City, December 27, 2010 - January 7, 2011).

			Type of action				Total
			Reporting to the police	Reporting to organization which advocate women's rights	Reporting to the Family Arbitrators	Others	
Occurrence of Marital rape	Yes	Count	2	2	7	7	18
		Expected Count	2.7	1.3	6.7	7.3	18.0
		% within occurrence of marital rape	11.1%	11.1%	38.9%	38.9%	100.0%
		% within type of action	50.0%	100.0%	70.0%	63.6%	66.7%
		% of Total	7.4%	7.4%	25.9%	25.9%	66.7%
	No	Count	2	0	3	4	9
		Expected Count	1.3	.7	3.3	3.7	9.0
		% within occurrence of marital rape	22.2%	.0%	33.3%	44.4%	100.0%
		% within type of action	50.0%	.0%	30.0%	36.4%	33.3%
		% of Total	7.4%	.0%	11.1%	14.8%	33.3%
Total	Count	4	2	10	11	27	
	Expected Count	4.0	2.0	10.0	11.0	27.0	
	% within occurrence of marital rape	14.8%	7.4%	37.0%	40.7%	100.0%	
	% within type of action	100.0%	100.0%	100.0%	100.0%	100.0%	
	% of Total	14.8%	7.4%	37.0%	40.7%	100.0%	

Table 27: Relationship between Occurrence of Marital Rape and Result of the action (Hawassa City, December 27, 2010 - January 7, 2011)

			Result of the action				Total
			Positive	Negative	Others	Nothing	
Occurrence of Marital rape	Yes	Count	11	2	2	3	18
		Expected Count	12.0	1.5	2.3	2.3	18.0
		% within occurrence of marital rape	61.1%	11.1%	11.1%	16.7%	100.0%
		% within Result of the action	68.8%	100.0%	66.7%	100.0%	75.0%
		% of Total	45.8%	8.3%	8.3%	12.5%	75.0%
	No	Count	5	0	1	0	6
		Expected Count	4.0	.5	.8	.8	6.0
		% within occurrence of marital rape	83.3%	.0%	16.7%	.0%	100.0%
		% within Result of the action	31.3%	.0%	33.3%	.0%	25.0%
		% of Total	20.8%	.0%	4.2%	.0%	25.0%
Total	Count	16	2	3	3	24	
	Expected Count	16.0	2.0	3.0	3.0	24.0	
	% within occurrence of marital rape	66.7%	8.3%	12.5%	12.5%	100.0%	
	% within Result of the action	100.0%	100.0%	100.0%	100.0%	100.0%	
	% of Total	66.7%	8.3%	12.5%	12.5%	100.0%	

5.9. Societal Attitude towards Marital Rape

In general men are presented as having biological needs for sex.²⁸⁸ Sexual appetite, it is argued that it is synonymous with hunger.²⁸⁹ Therefore, if a man is deprived of sex, a sexual assault is understandable even pardonable.²⁹⁰ As a result wives are expected to be sexually available when ever their husbands require, if they refuse they should also be prepared to face the consequence. The consequence could be forced sexual intercourse or the husbands may have extra-marital sexual intercourse or divorce.

Stereotypes about women and sex such as “women enjoy forced sex,” women say ‘no’ when they really mean ‘yes’ or it is a wife’s duty to have sex continued to be reinforced in culture.²⁹¹ Such messages not only mislead men in to believing that they should ignore a women’s protest it also mislead women in to believing that they must have

²⁸⁸ Sue Lees, *Ruling Passion* (1997), P.78.

²⁸⁹ *ibid*

²⁹⁰ *ibid*

²⁹¹ www.Wellesely.Edu/WCW/WRN, 2000

'sent the wrong signals', blaming themselves for unwanted sexual encounters, or believing that they are bad wives for not enjoying sex against their will.²⁹²

In this study 9.4% of women who are maritally raped tolerate it because of cultural influence. In Ethiopia things which happen within the family are parts of family secrets and privacy. As a result women tolerate marital rape because they do not want to expose their family secrets in addition to the society's understanding that sex in marriage is part of duties of wives.

In order to see the attitude of the society in Hawassa city the writer has prepared a focused group discussion consisting of three groups each with a size of 10 people. The first group consists of religious leaders and elders, in the second group married, widowed, divorced and also single men were involved and the third group involved married women. And the results the writer received from the discussions is as follows.

The first group which was consisting of religious leaders said that marriage is a bond in which the husband and the wife becomes one. A husband raping his wife means he is raping himself which is impossible. The Christian religious leaders said, in Christianity marriage is the most respected union two people could ever have and for the parties who enter this union in order not to have sexual intercourse both parties agreement is required but in order to have it one party's interest is enough. The Muslims said in their religion the wife is expected to obey her husband and refusing sexual intercourse is not acceptable.

According to group two, marriage is personal and the sex life of married couples is their personal matter, criminalizing marital rape will be excessive interference within marital relationship. It also cuts the chance of reconciliation because once the case goes to court the result will be, obviously, divorce.

Group three come to the conclusion that women should try to solve their problems with their husbands by talking to the husbands and making them understand. The women in the group said this is a smart and easy way for a woman to solve her problems. But if she prefers to take it in to the public it will be an embarrassment to her family and she will be understood as an irresponsible wife who does not consider the needs of her husband.

²⁹² www.Wellesely.edu/WCW/WRN, 2000

From the analysis of the questioners it is known 85.1% of the women who filled the questioners believed that marital rape is a crime. But in the focused group discussion the women prefer to solve the problem of marital rape at home by talking with their husbands. This shows that women knowing marital rape violate their rights but they still prefer not to go to court or the police to get remedy in order to avoid embarrassment of their family. This is because of the cultural and societal influences which put the family first and prevent women from going public to require remedy for the violation of their rights.

All of the groups' members strongly objected the criminalization of marital rape and said it is against the culture and the religions of the country. All people in the groups' discussions agreed on if a wife accuses her husband of rape and take the case to court the result of the proceeding will be divorce, because they will not be able to live together after their family secret is out in the air. Furthermore divorce destroys the family and it has both psychological and economic effects on the children and most of all causes societal crisis because the family is believed to be the base of the society. They also added it is inappropriate for the state to intervene with the institution of marriage and the family.

Some of the participants in the groups' discussions agree marital rape affects the rights and health of the victim but they believe the harm is lower compared to rape by stranger and the wife should tolerate it in order to protect a greater good, her family. What all groups agree upon is in marriage people should make compromise because the result of divorce is very difficult especially for the woman and her children.

5.10. The Role of Organizations which are established for the Protection of Women's Human Rights

Since there are different organizations established in Ethiopia for the purpose of protecting the rights of women, it is important to see what these organizations are doing in order to alleviate the problems women are facing because of marital rape.

For this purpose the writer has visited the Southern Nations, Nationalities and People Regional State women and children affair office at 20/12/2010. The writer interviewed W/ro Marta Tigero who is a legal affairs officer.

In the interview she put that marital rape violates women's right to equality, freedom and want. It also shows the superiority of men. It is a backward culture which shows women are born to satisfy men and they do not have a right to say no. Moreover, women could not discuss about marital rape they experience to others since it is considered as normal by the society and there is a chance that they might be considered as insane if they do.

Marital rape should be considered as a crime, according to her, because most women are victims of this abuse. In addition it could be repetitive since the abuser lives with the victim. However, it is highly connected with benefits women could get since if the victim does anything against the acts of the abuser, he may in return refuse to give money for food and even refuse to take the victim to hospital when she gets sick and may even decline to support their kids.

She said her office gives education to the public at large about abuses against women which violate their human rights, within which marital rape is categorized. While teaching about marital rape as part of abuse against women, she claimed, they face critics even from the educated ones saying 'women are going to extremes by claiming wrong what men have as a marital right'.

Since no law of the country describes marital rape as a crime, it is just simply described as violation of women's right when they educate the public. But she believed the constitution is wide enough to include marital rape as violence against women when it describes violence on women caused by harmful customs, laws and practices that cause any physical or psychological harm.

And she also stated they work hand in hand with bureau of justice. In 2010's 'white ribbon day' bureau of justice in cooperation with her office have presented a proposal which states marital rape should be counted as crime and a law which criminalizes marital rape should be drafted.

In trainings they conduct, they teach marital rape is a crime and should be criminalized. She emphasized on even if the problem is widespread many women do not come to them complaining about marital rape because of culture, difficulty of producing evidence and fearing more violence.

For women who came to complain about marital rape and raised it as a reason for divorce, the office give them counseling service and if they want to take their case to court the office will contact Hawassa university 3rd and above years law students who give probono services for them. But since marital rape is not a crime, she said, in order to present it to the court in cases where physical violence is involved they present domestic violence as a reason for asking a divorce.

She also said they give aid to these women by making contacts with organizations which give support and counseling services, and when there is delay of justice the office interfere by presenting evidence, since the office do not have power to interfere in courts without evidence.

In addition to, as stated above, working hand in hand with Hawassa university 3rd year and above students who give probono service, the office is also trying to make sure lawyers have given their 50 hours required probono service by cooperating with bureau of justice. The problem which prevents the office from giving a wider help regarding such violence is the unavailability of laws which criminalize marital rape.

If there is a law criminalizing marital rape many women will come out claiming their rights, as she put. But now when they complain to the police, they do not get due attention since there is no law and mostly, problem between spouses is not given due attention by the police.

5.11. Marital Rape and the Justice System

Courts are places where human rights violations are corrected, offenders are punished and victims are compensated. The attitude of judges is crucial in giving fair judgments therefore, in order to know the attitude of judges towards marital rape the writer has randomly selected Ato Melkamu Abereham for interview from the most experienced judges in Hawassa city court.

According to him family is an institution and if there is a law criminalizing marital rape and women bring complaints to courts judgment will be given accordingly but this will affect the institution. In his opinion this is a reason for the lack of laws criminalizing marital rape. He added it is a fact that sometimes when the husband wants sexual intercourse the wife may not be in the mood, but if it is criminalized to force her to have

sex, that might result divorce, which destroys the institution of family. Therefore, in order to prevent societal crises the law gives priority to family. Now a day since it is easy to get a divorce the number of divorces has increased at a very high rate. Criminalizing marital rape will have similar effect.

He said every human being is entitled to human rights by the mere fact of being born human. It is the understanding of people that unless it is forbidden by law people do whatever they want and in order to protect the rights of others from being violated, law is required. But he also added, not having a law criminalizing marital rape is better in order to prevent societal crises. It is better to teach people the negative side of marital rape without having a law. And he underlined that presenting evidence is also very difficult even though a law is drafted.

He added, if there is a law criminalizing marital rape women will come to courts complaining about it. Even now women who came to court fighting with their spouse indirectly complain about marital rape since there is no law criminalizing it. If marital rape is criminalized there may be societal crises but still people may refrain from committing marital rape by fearing laws and the offence may decrease.

To know the opinion of lawyers the writer has randomly selected Ato Cherenet Gebrehiwot for an interview from lawyers in Hawassa city. He said in our country when a law is drafted it considers different variables, culture and customary practices. Since marital rape is not recognized by our culture as a wrong doing there are no laws criminalizing it. The Family Code states in marriage spouses are duty bound to have sexual relation unless it has negative effect to the health of the spouse. It does not state anything about consent. This principle affects existence of marital rape.

He believe that even prosecuting ordinary rape, i.e. rape by stranger, is difficult for so many reasons and it will be more difficult, nearly impossible, to prosecute the more specific and domestic one of marital rape. Moreover, he argues, in our country marital rape is not a priority. We are underdeveloped and we got various problems which are more severe than this one that needs due consideration right away.

On the other hand he said marital rape is against the constitution as it violates the basic human rights of women. For most divorces he saw marital rape is the basic reason. It is

also connected with fidelity, if a husband does something against the will of his wife it is a breach of fidelity and it is against the Family Code.

He added marital rape has an adverse effect, physically and psychologically, on the health of the women and criminalizing it may save many women. When clients tell their lawyers they are maritally raped they tend to tell them to find other causes for asking for divorce, like drinking habit of the spouse, physical abuse and not giving money for food because these reasons are enough for asking divorce.

He also said criminalizing marital rape affects the institute of marriage. Despite such effects on the institution, if it is criminalized it protects the victim and nobody should be left to be a victim. At least it will help them to know about their rights and it refrain men from committing it.

He pointed out it is difficult for a woman to say she is maritally raped because of the culture and if marital rape is criminalized the only result is divorce and since many women are dependent on their husbands what will happen to them after divorce is more feared than the violence itself.

5.12. Problems in Prosecuting Marital Rape

State statutes prohibit prosecution of spouse in a number of ways.²⁹³ For example the statute may define rape as non consensual sexual intercourse by a man with a female who is not his wife,²⁹⁴ as defined by the Ethiopian criminal code. Other states simply refer to intercourse with a female or a person and then define that to exclude spouse of the actor.²⁹⁵ Still others define sexual intercourse as any act of sexual gratification between persons not married and then these statutes qualify that persons living apart under a judicial order are not married.²⁹⁶

Even when the legal definition of rape is wide open to include marital rape, to be considered, as a crime, the other main problem which might prevent women from taking their case to court and asking for their rights is problem of proof because it is hard to proof the occurrence of marital rape. One of the problems in prosecuting marital rape

²⁹³ S. Fry Waterman, For Better or Worse: Marital Rape(1988),p. 9

²⁹⁴ *ibid*

²⁹⁵ *ibid*

²⁹⁶ *ibid*

could arise in producing evidence to the court, since courts give judgment based on evidence. Spouses are expected to have sexual intercourse consensually; as a result it is difficult to prove rape in fact took place.

The writer of this paper insists the fact that prosecution will be difficult is not a reasonable justification to prohibit women their right to equal protection of the law. Difficulty of presenting proof of lack of consent, an essential element in rape prosecution, is not the problem of marital rape only as many other rape cases also face the same problem. According to the lawyer interviewed for this research purpose, the problem in criminalizing marital rape is problem of proof but problem of proof does not only exist in case of marital rape it is a problem “in other types of” rapes too. Rape, whether stranger or marital, is not committed in front of witnesses. To prove marital rape the victim can present as evidences to the court like sign of physical resistance, physical injury, and medical evidence that forbid her from having sexual intercourse, proof is as hard as in stranger rape.

Those who support spousal immunity, from being charged with rape, take the difficulty of proving the alleged crime as their primary reason. In addition evidence in prosecution of marital rape might be limited to the word of one spouse against the other. The commentators conjure up images of a horde of spiteful wenches lying in wait for such a charge, ready to blackmail their husbands in to favorable divorce settlements or get even for some real or imagined wrong.²⁹⁷

By the opinion of the writer, it is doubtful that women will file false complaints against their husbands in order to harm them because the offence of domestic violence, which can be applied by one spouse against another in deceitful manner, is criminalized and included in Ethiopian Criminal Code. This is also the risk the criminal law is willing to take in criminalizing rape by stranger. Another weakness with the rationale that women will fabricate charges is its failure to recognize that a social stigma, of culture, family responsibility and social norm, is still emotionally involved to the victim.

W/ro Marta Tigero underlined on how the prosecution of marital rape should be. She said if a law that criminalizes marital rape is drafted evidence for prosecution should be only what the victim say and what she can explain and the harm she encounter, justice

²⁹⁷S. Fry Waterman, For Better or Worse: Marital Rape(1988), p.5

should be served according to that. This is because it is an area where there is shortage of evidence; people in the family who might know what happened try to mediate the spouses but mostly they are not willing to testify in courts. Since marital rape is a complicated issue courts should give decision based on what the victim say.

But she strongly stated there should be law criminalizing marital rape and since there is problem in producing evidence, prosecution should take place in special way by presenting as evidence only the physical appearance of the woman, her income and medical evidence. The law that criminalizes marital rape should put the above in to consideration. If the law does not consider the fact that the violation is only known to the victim it will not help the victim because there is no witness, most likely, to marital rape.

In the opinion of the judge interviewed on how the prosecution of marital rape should be, he stated that it is difficult to draft laws because it causes societal crisis and the law is supposed to protect the family institution. Moreover, since courts give judgments based on evidence, it is difficult to get evidence for prosecuting marital rape.

He said in criminal cases the victim has to prove his/her case to the court beyond reasonable doubt but this is difficult when it comes to marital rape. But in civil cases the victim is expected to explain only 50+1%, preponderance of evidence. Therefore if the victim does the same as that of in civil litigation cases, the court should grant remedies and this should be the way how marital rape is prosecuted.

But in the view of the writer, the basic principles of criminal code should not be altered for prosecuting marital rape. Instead the law should try to give special weight to the circumstantial evidences brought by the victim as some evidences that can be used in cases of 'other types of' rape, medical evidence of the alleged criminal sperm, cannot be accepted in marital rape situation since sexual acts is recognized to happen in marriage. In addition, the writer of this paper believes exemption will not be a solution since every citizen should have equal protection by the law of the land.

Furthermore even if marital rape is a difficult crime to prove, there is another reason for abolition of the exemption.²⁹⁸ The law sometimes operates as an educational tool as

²⁹⁸ S. Fry Waterman, For Better or Worse: Marital Rape(1988), p. 5

deterrence.²⁹⁹ In theory then, unknown number of husbands will be deterred from raping their wives by the abolishment of the exemption, while an unknown number of other persons will come to recognize marital rape as a criminal act.³⁰⁰ Men need to realize that they are going to be held responsible for any behavior that violates a woman's right to her own body.³⁰¹ By these the law can play a major role in decreasing the number of victims of marital rape. If men know the consequence of their act of forcing their wives in to sexual intercourse without considering their consent, will result in criminal charges they will refrain from such acts.

5.13. Is the Ethiopian Government Fulfilling its Obligation in Protecting Women from Marital Rape?

As stated in chapter four, the state of Ethiopia has ratified the major international instruments including ICCPR, ICESCR, CEDAW and the African Charter. In article 9(4) of the FDRE constitution it is stated “all international agreements ratified by Ethiopia are an integral part of the law of the land”. Under these international instruments the county has an obligation to protect the rights of women.

In addition the Vienna convention on the law of treaties of 1969 in article 26 there is a principle of ‘Pacta sunt servanda’ promise made must be kept and accordingly state parties are under legal obligation to perform their treaty obligation in good faith. States by ratifying the human rights instruments have obligation to realize the rights contained to the benefit of its citizens. Therefore, states have four types of obligations; to respect, protect, promote and fulfill.

Crimes against women including rape, sexual slavery, trafficking, and domestic violence are crimes against humanity, and the failure of governments to prosecute those responsible for such crimes implies complicity.³⁰² This means the Ethiopian government by failing to criminalize marital rape it is legitimizing the act by permitting husbands to rape their wives without fearing any consequences. Since marital rape is a violation of the human rights of women by failing to prosecute the act as stated above the government is participating in the violation of the human rights of women.

²⁹⁹S. Fry Waterman, For Better or Worse: Marital Rape(1988), p. 5

³⁰⁰ *ibid*

³⁰¹ *Ibid*, p.5-6

³⁰²G. Alfredsson and K. Tomasevski, A Thematic Guide to Documentation on the Human rights of Women. (1995), p. 49

As stated in chapter four it is the duty of the government to safeguard the dignity, personality and nationality of women, single or married, prevent their exploitation, particularity as sex objects. Protecting women from marital rape falls under this duty. And one of the ways in which the government protects the rights of its citizens is by drafting laws. Since there is no law protecting women from marital rape, the Ethiopian government has not fulfilled its duty to protect women from such abuse of human right.

Under general international law and specific human rights covenants, states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and to provide compensation.³⁰³ State parties should also ensure that laws against family violence, abuse, rape, sexual assault and other gender based violence give adequate protection to all women, and respect their integrity and dignity.³⁰⁴ Appropriate protection and support services should also be provided for victims.³⁰⁵ Furthermore gender sensitive training of judicial and law enforcement officers and other public officials are essential for the effective implementation of the international conventions.³⁰⁶ The government fails to take these actions against marital rape by not abolishing the exemption. As a result the Ethiopian government is not respecting the obligations it has entered under international human rights documents it has signed and also the Constitution which obligates these instruments to be part of the law of the land.

³⁰³ CEDAW General Recommendation no. 19,

³⁰⁴ G. Alfredsson and K. Tomasevski, A Thematic Guide to Documentation on the Human rights of Women. (1995), p. 316

³⁰⁵ *ibid*

³⁰⁶ *ibid*

Conclusions and Recommendations

Conclusions

All human rights are universal and all human beings are entitled to equal rights. Discrimination should not be made based on sex, race, marital status, etc. Exemption of marital rape violates this principle because married women are discriminated from getting remedies for the violation of their rights for the mere fact that they are married.

Millions of women in the world are exposed to marital rape. It is one of the violence women faces at their homes. In some cultures, in marriage the wife is presumed to have given her consent to sexual intercourse permanently. This belief makes marital rape rampant with no remedies for wives. In marriage, it is expected that, both the husband and the wife have equal rights and one cannot coerce the other to engage in sexual intercourse. Rape is rape irrespective of where it is committed within or outside marriage.

Traditionally men are the head of the family which results in the dependency of women on their husbands. This dependency leads to the dominance of men which, in return, results in different types of violence against women, including marital rape, since women will not have a say because of their dependency.

Economic dependency of women and societal attitude about marriage are some of the causes of marital rape. Marital rape causes both physical and psychological harm to victims and also exposes victims to HIV/AIDS. Even though marital rape has a far reaching effects, it's still the privilege that men exercise by the mere fact of being married to the woman as those who are expected to do more in promoting and protecting the rights of women prefers to be silent.

Some people including those who run the justice system give priority to family. They prefer the sacrifice of women's rights in order to protect the institute of the family claiming it to be the base of the community and deserve the utmost care. Unless such attitudes, of the community as well as the intellectuals, change it is impossible to bring amendment.

The culture and tradition of Ethiopia forces women to keep sexual experience as their personal secrecy. Furthermore, even if they dare to expose such things its barely available to get support and protection. Besides, most women believe sex as their marital duty.

According to this research 31% of women in the urban parts of Hawassa city are martially raped. This shows how such violation of women right is spread out and a lot needs to be done to tackle, and then, protect women from experiencing such abuses.

Governments are duty bound to eradicate violence against their citizens. Occurrence of marital rape is connected, based on the findings of this research, with educational status, income, occupation and age. This shows one of the causes of marital rape is lack of fulfillment of socio-economic rights of women by the government.

Recommendations

Marital rape is a violation of the human rights of women which needs to be eradicated. In order to decrease the number of victims of marital rape and thereby protect the fundamental rights and freedoms of married women, the writer believes the following should be fulfilled;

- Cultures and beliefs which imply that women give a permanent consent to sex at marriage should be eradicated through implementing awareness rising programs for the general population. Men should be educated to know rapping their wives is wrong. And wives should know it is the violation of their rights and it is not their marital duty.
- Marital rape is a basic human rights violation and discriminates against married women. Ethiopia has signed CEDAW in which the country has promised not to discriminate women based on their marital status. Therefore, Ethiopia need to abolish the marital rape exemption in order to fulfill its obligation. The Ethiopian government has a duty to criminalize marital rape because it is a human rights violation and any acts which violates human rights whether it happens in public or private sphere should not be tolerated.
- One of the major causes of marital rape is the economical dependency of women on their husbands. The government is duty bearer in fulfilling the socio-economic and cultural rights of women. This is important in order to release women from dependency. The government of Ethiopia should take measures to increase women's access to property, including land and inheritance.
- The need for additional legislative measures should be recognized. Sanctioning marital rape in to the Criminal Code is required. But only having laws will not be a solution. Education of the public in general should take place because unless the public understands marital rape is a violation of the fundamental human rights only criminalizing it will not be a solution.
- Training law enforcement personnel is also crucial because law enforcers should understand the problem and know it is a violation of the human rights of women. Otherwise they will not be able to understand it and help victims.

- Establishing a legal aid system to provide assistance to women victims of marital rape is required. This can be done by ensuring women's access to legal aids and informing women their rights and legal recourse mechanisms. Women should be encouraged to come to the justice system to ask for help. The law should be able to assist victims in presenting evidence because since sex in marriage is expected it is hard for the victim to present evidence. There should be a remedy for victims of marital rape, in cases where they leave their husbands restraining order or shelter should be provided as necessary.
- In Ethiopia religion is crucial in many people's life. Therefore, in order to bring change on the attitudes of people about marital rape it is necessary to train religious leaders the negative effects of marital rape. In this way they will teach their followers the harm of marital rape and it is wrong to force wives to sex against their will.
- The aim of criminalizing marital rape should not be imprisonment of husbands or destruction of families. But its main purpose should be deterring husbands from rapping their wives and making them understand it is wrong and by that protecting the fundamental human rights of women.
- In the opinion of the writer separate article dealing with marital rape should be drafted. The writer wants to emphasize that while dealing with marital rape there are things that should be taken in to consideration. Of such conditions, considering the difficulty of producing evidence, special weight should be given to circumstantial evidences since some evidences that could be used in prosecuting an alleged criminal in ordinary rape situation cannot be used in marital rape cases like presence of sperm on the victim's body. Moreover, the aim of the penalties under such article should be correcting the abuser from doing such acts again and due attention should be given to the safeguarding of the family.

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መጠይቅ

ይህ መጠይቅ የተዘጋጀው ለሁለተኛ ዲግሪ የመመሪያ ጥናት ማሟያ ነው። የመመሪያ ጥናቱ በትዳር ውስጥ ስለሚፈጸም አሥገድዶ መድፈር ከሰባዊ እና ከሴቶች መብቶች አንጻር ለማጥናት አላማ ያደረገ ሲሆን ይህን ጥናት በተሣካ ሁኔታ ለማካሄድ የሴቶች እንዲሁም በድርጊቱ ተጎጂዎች በጋብቻ ውስጥ ስለሚከሰት አሥገድዶ መድፈር ያላችሁን አመለካከት ማወቅ አሥራላጊ ሆኖ በመገኘቱ ይህ መጠይቅ ተዘጋጅቷል። መጠይቁን ሲሞሉ ማንነቱን ለመጠበቅ ሲባል ስሞ እና አድራሻዎ በጥናቱ ውስጥ አይካተትም።

መጠይቁን ሲሞሉ ምርጫ ላላቸው ጥያቄዎች ከምርጫው ውስጥ መልስ የሚሆነውን በማክበብ መልስ ሲሰጡ ምርጫ ለሌላቸው ጥያቄዎች በክፍት ቦታው ላይ መልሶን በመሙላት ይመልሱ።

መጠይቁን በመሙላት ስለተባበሩን በቅድሚያ

እናመሰግናለን

1. የጋብቻ ሁኔታ

U/ በጋብቻ ውስጥ እገኛለሁ	ለ/ አግባቹ ፈትቻለሁ	ሐ/ ባለቤቱ በሞት ተለይቶኛል	
2. እድሜ /የእርስዎ/ U/ 18-25	ለ/ 26-35	ሐ/ 36-45 መ/ ከዛ በላይ	
- ካገቡ የባለቤትዎ ዕድሜ U/ 18-25	ለ/ 26-35	ሐ/ 36-45 መ/ ከዛ በላይ	
3. የትምህርት ደረጃ የእርስዎ ደረጃ	U/ አልተማርኩም	ለ/ የመጀመሪያ ደረጃ	ሐ/ ሁለተኛ ደረጃ
	መ/ ሠርተፍኬት	ሠ/ ዲፕሎማ	ረ/ ዲግሪ ሰ/ ከዛ በላይ
- የባለቤቶች	U/ አልተማሩም መ/ ሠርተፍኬት	ለ/ የመጀመሪያ ደረጃ ሠ/ ዲፕሎማ	ሐ/ ሁለተኛ ደረጃ ረ/ ዲግሪ ሰ/ ከዛ በላይ
4. ሥራ የእርስዎ	U/ ሥራ የላቸውም	ለ/ የመንግስት ሠራተኛ	ሐ/ የግል ድርጅት ተቀጣሪ መ/ በግል የሚሠሩ
- የባለቤትዎት	U/ ሥራ የላቸውም	ለ/ የመንግስት ሠራተኛ	ሐ/ የግል ድርጅት ተቀጣሪ መ/ በግል የሚሠሩ
5. የወር ገቢ /የእርስዎ/	U/ የለኝም	ለ/ <150	ሐ/ 151-650 መ/ 651-1400 ሠ/ 1401-2350 ረ/ ከዛ በላይ
-የባለቤትዎት የወር ገቢ	U/ የለውም	ለ/<150	ሐ/ 151-650 መ/ 651-1400 ሠ/ 1401-2350 ረ/ ከዛ በላይ
6. በጋብቻ ምን ያህል ጊዜ ቆይተዋል?	U/ ከአምስት ዓመት በታች	ለ/ ከ5ዓመት - 10 ዓመት	ሐ/ ከ11 — 15 ዓመት መ/ ከ16 — 20 ዓመት ሠ/ ከዛ በላይ
7. ጋብቻ የፈጸሙት ሁኔታ	U/ በፈቃድዎ	ለ/ በቤተሰብ ተገደው	ሐ/ ተጠልፈው መ/ አስገድዶ መድፈር ስለደረሰብዎት ሠ/ መልስ
- አልተሰጠም
8. ባለቤቶች በእርስዎ ላይ በሀይል በመጠቀም ጉዳት አድርሰዎት ያውቃል? U/ አዎ ለ/ አያውቅም
 - ለጥያቄ ቁጥር 9 እና 10 በተራ ቁጥር 8 የቀረበው ጥያቄ መልስዎ አዎ ከሆነ
 9. ምን ያህል ጊዜ ጉዳት ደርሶቦታል? U/ አልፎ አልፎ ለ/ በተደጋጋሚ
 10. በምን ምክንያት ነበር ባለቤቶች ሀይል የተጠቀሙት? U/ በግብረ ሥጋ ግንኙነት ለመፈጸም ፈቃደኛ ባለመሆኖት ለ/ የቤት ውስጥ ሥራ ባለማከናወኖት ሐ/ ባለቤትዎ አልኮል በመጠቀማቸው መልሶት ከምርጫው ውጭ ከሆነ ከባይ ቦታው ላይ ያስቀምጡ

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11. ከባለቤቶች ጋር የግብረ ሥጋ ግንኙነት ለመፈጸም የሁለታችሁም ፈቃድ ያሥፈልጋል ብለው ያስባሉ? U/ አዎ ለ/ አላስብም
12. ባለቤቶች ከፈቃደት ውጪ የግብረ ሥጋ ግንኙነት እንዲፈጽሙ አስገድዶት ያውቃሉ? U/ አዎ ለ/ አያውቁም
13. ለጥያቄ ቁጥር 12 መልስዎ አዎ ከሆነ ይህ ድርጊታቸው የእርስዎን ሰባዊ መብት የሚነካ መሆኑን ያውቃሉ? U/ አውቃለሁ ለ/ አላውቅም

14. ባለቤቶች ከፍላጎቶች ውጪ የግብረሥጋ ግንኙነት እንዲፈጽሙ አስገድዶት የሚያውቁ ከሆነ በድርጊቱ የትኛው የሠባዉ መብቶች የተረገጠ ይመስልዎታል?

ሀ/ ሠብአዊ ክብር ለ/ ሠውነቶን የመቆጣጠር ሐ/ የመራባት

15. ያለፍላጎት የሚደረገውን የግብረሥጋ ግንኙነት ካለ ለማስቆም ሙከራ አድርገው ያውቃሉ?

ሀ/ አዎ ለ/ አላውቅም

16. ለጥያቄ 15 መልሶት አዎ ከሆነ በምን አይነት መልኩ? ሀ/ ለፖሊሥ በማመልከት

ለ/ ለሴቶች መብት ለቆሙ ድርጅቶች በማመልከት ሐ/ ለቤተሠብ ሽማግሌ በመንገር

መልስዎ ከዚህ ውጪ ከሆነ በባዶ ቦታው ላይ ያስቀምጡ

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17. ለጥያቄ 16 ላይ ላደረጉት ሙከራ ያገኙት ምላሽ ምን ነበር?

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18. ባለቤቶች ያለፍቃዶት በፈጸሙት የግብረ ስጋ ግንኙነት ምክንያት ያጋጠሞት የጤና ወይም የአእምሮ እክል አለ? ሀ/ አዎ ለ/ አላውቅም

19. ባለቤቶች የሚፈጽሙትን ያለ ፍላጎት የሚደረግ የግብረ ሥጋ ግንኙነት ካለ እና ለማሥቆም ምንም ሙከራ አድርገው የማያውቁ ከሆነ ድርጊቱን የታገሡበትን ምክንያት በባዶ ቦታው ላይ ያስቀምጡ

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20. ያለፍላጎት ባለቤትዎት በፈጸሙበት የግብረሥጋ ግንኙነት ምክንያት አርግዘው ያውቃሉ?

ሀ/ አዎ ለ/ አላውቅም

21. የአባላዘር በሽታ ይዞት ያውቃል? ሀ/ አዎ ለ/ አያውቅም

22. ለጥያቄ 21 መልስዎ አዎ ከሆነ መንስኤው ምን ነበር?

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23. ከባለቤትዎት ጋር በፍቺ ቢለያዩ ምን ጉዳት የሚደርስብዎት ይመስልዎታል?

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24. በጋብቻ ውስጥ ያለፈቃድ የሚፈጸም የግብረስጋ ግንኙነት ወንጀል ነው ብለው ያምናሉ?

ሀ/ አዎ ለ/ አይደለም

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