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Faculty of Law

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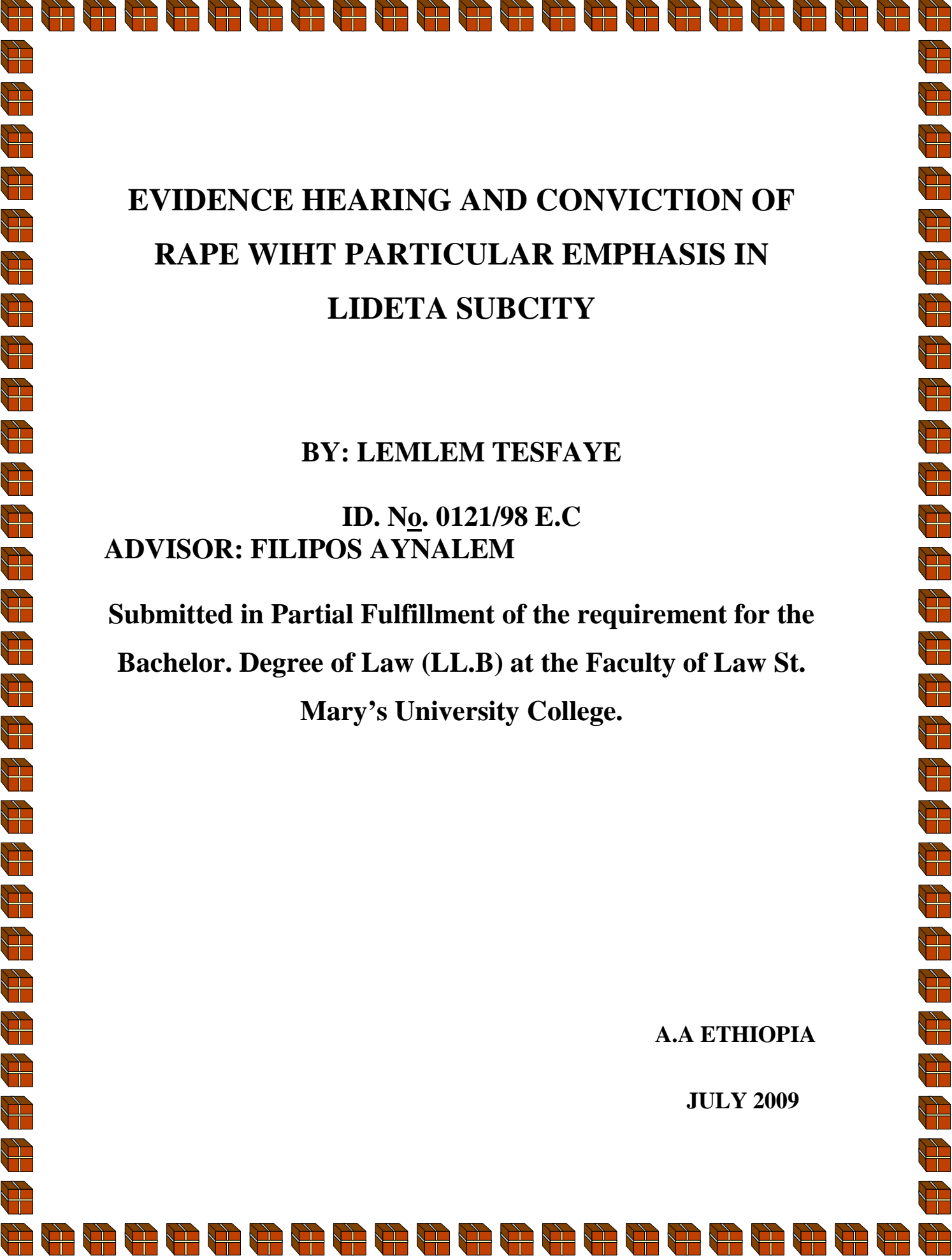
**EVIDENCE HEARING AND CONVICTION OF
RAPE WITH PARTICULAR EMPHASIS IN
LIDETA SUBCITY**

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ID. No. 0121/98 E.C

A.A ETHIOPIA

JULY 2009



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**Submitted in Partial Fulfillment of the requirement for the
Bachelor. Degree of Law (LL.B) at the Faculty of Law St.
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A.A ETHIOPIA

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Bibliography

I. Table Of Books

1. Chandra Behari: the principle of Administration of Criminal Justice in India. (1968)
2. Henery Campell Black: Black Law Dictionary (1951)
3. Deluca, Fortunato J. Investigation of sexual assault Crimes “criminal and civil investigation hand book (2nd ed, 1993)
4. Henery Campbell Black’s law dictionary (6th ed, 1990)
5. Andrew Asheworth, principles of criminal law, west publishing co. (2th ed, 1995)
6. American juris prudence 2nd complete restatement of the entire American law book company, Booklynny, (1972).

II. Other bibliography Materials

1. Tadesse Tafesse. Sexual offence under the 1957 Ethiopian penal code (unpublished, A.A U. faculty of law, (1982).
2. Corpus jursi secundum, vol. 75 (1995)
3. Daiuid Mequoid, Mosonetal, crimes against women and children 2001
4. Amercan Jursipudence, (1972)
5. Dawit Gemechu, Law of evidence Alfa higher institute of distance studies (un published Addis Ababa August, 2000 G.C
6. Protection of women and children training manual prepared by Ethiopian women lawyer’s association January, 14 1999.
7. E. Halberman, the Rape Victim, American law institutes, St. Paul, minn. (1976)
8. Allison Morris. Women Crime and criminal justice
9. W. Young, Rape study: A Discussion of Law and practice Butter worths and co. London, (1983)
10. Solomon Abadi, Materialist for study of Constitutional law II
11. Abba Paulos Tzada; the Fetha negest (Faculty of law, H.I.u, 1968)
12. Sahlou Birri: Crime of Investigation in Ethiopia (un published, A.A.U Faculty of law, 1974)
13. Rape and Abduction, Historical Perspective Andargachew Tesfaye Pro. Of Soc. And soc. Ad1996 A.A.U. P. 2-5

III. Table of Law

1. Penal code of the Empire Ethiopia. 1957. Proclamation number 158 Neg. Gaz, year 16 No. 1
2. Criminal procedure code of the Empire of Ethiopia. 1961. Proclamation number 185, Neg. Gaz. Year 21 No. 7
3. Civil code of Ethiopia. 1960, proclamation number 165 Neg. Gaz (extraordinary) 19th year, No. 2
4. F.D.R.E. Constitution 1995, proclamation number 1, Neg,Gaz, year, No.1
5. Criminal code of the Ethiopia pro. number 414/2004.

IV. The United Nations

1. The 1945 charter of united nations.
2. The 1948 universal Declaration of Human Right (UDHR)
3. The 1966 International Convention Civil and Political Right (ICCPR).
4. The 1993, Declaration on the Elimination of Violence Against Women (DEVAW).
5. The 1979 Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

IV. Journals

1. Berchi: The Annual Journal of Women Lawyers Association Vol. 11, 2000 A.A
2. Menon, PL. "the law of Rape and criminal law administration with Sp. Reference to the common wealth caribbean, "International and Comparative Law quarterly, vol. 32. (1983)
3. Mary Carroll Ellsberg, Candies in Hell-Research and Action Domestic Violence Against Women in Nicaragua Oxford at the Clanrendon Press, (2000)
4. Berchi; the Annual Journal of Women Lawyers Association Vol. 5. 2008.

Table of cases

1. File No. 85386, public prosecutor V_s Bruh Tesfaye
2. File No. 115110, public prosecutor v_s Fantaye EShetu
3. File No. 01223, public prosecutor v_s Daniel Abera
4. File No. 2479 public prosecutor v_s Fseha Desalegn

Interview

1. Interview with Yemsrach Gezahagn investivator of crimes on women and children of violence on the Lideta police department.
2. Interview with Aberet Haile public prosecutor of Lideta F.F.I Court.

I here by declare that this paper is my original work and I take Full Responsibility for any failure to observe the conventional rules of citation.

Name: _____

Id.No.: _____

Signature: _____

Chapter one

1. Historical Background of Rape

The consideration of rape as a crime is not of a recent phenomenon. It dates back to times immemorial. In the laws of ancient Babylon it was taken as a theft of virginity. The code of Hammurabi, too subjected the rapists to death penalty while setting free the victims as guiltless. ¹

Though in the ancient times rape was considered as a crime, there was no legal definition accorded as to what it is constituted of. It was only its status and extent of punishment that was changing throughout the course of time. In the English Common Law system, for instance, it was reduced to misdemeanor ² in 1275, but this did not last long and was declared a felony ³ again in 1575, when punishment was made more sever and was punishable by imprisonment for life. The first land mark legislation in the history of rape was enacted in Britain in 1736 which abolished all restricting factors in bringing charges against rapists. ⁴

The feminist movement in the United States of America has had a major effect on changing laws and attitudes concerning rape. The first state to respond to pressure for reform was Michigan. In 1975 Michigan created the new crime of criminal 'sexual conduct' to replace the traditional rape laws. The Criminal sexual conduct law recognizes four degrees of sexual acts, differentiated by the infliction of injury, the amount of force used, and the age and mental condition of the victim. Recent legislation in several states has also removed some of the difficulties women encountered in rape prosecutions. In some states they are no longer required to reveal prior sexual activity, the requirement of corroborative evidence has been reduced or eliminated, and a wife may now charge her husband with rape. ⁵

As far as the Ethiopian condition is concerned, the earliest mention of the illegality of rape is in the Fetha Negest, believed to have been introduced in Ethiopia in the Fifteenth century.⁶

The Fitha Negest, which was a compilation of rules incorporated in the old and new testaments, is considered to be an inviolable and sacred religious text of the then society. Among the sexual offences which were taken to be immoral and punishable in the Fitha Negest, was rape and it was categorized with offences like adultery, bigamy, abduction and seduction and made punishable with disfiguring of the face and by cutting of the offender's nose.⁷

Later on in the 1930 penal code rape as a sexual offence, was made punishable pursuant to Art.387.⁸

In the 1957 Ethiopian penal code, rape is punishable under injury to sexual liberty and chastity Particularly under Art. 589.⁹

Finally the Ethiopian parliament adopted a new Criminal Code which makes rape a crime Art. 620 of Proclamation 414/1996¹⁰.

1.1 Definition of rape

Rape, as defined in Black law dictionary, is “un lawful sexual intercourse with female without her consent.” Or it is an act committed against women, overcoming her resistance by force or under other prohibitive conditions .¹¹

Allison Morris considers rape as motivated by anger (involving an expression of hostility towards women and desire to humiliate them) and power (involving the assertion of dominance over women) .¹²

Moreover, rape is sex without the consent of the victim and conscious is process of intimidation by which men keep women in “ a state of Fear ” the act rape has no boundaries, it is a sexual attack against women of all religion, ages, race etc. ¹³

Rape is also defined as a sexual intercourse or penetration against the will of the victim. Rapes as one of the most heinous and shocking crime committed by a man to obtain unlawful carnal knowledge of a women with out her consent through the use of force, fear or fraud. The very essence of the crime of rape is not having sexual intercourse but the injury and out rage to the modesty and feeling of the victim resulting from the forcefully and feloniously effected sexual intercourse. ¹⁴

Generally, rape is result of structure of society that generally sets men up as powerful, and women as a victims. When the sex roles of both men and women are defined by individual needs and talents rather than by stereo type expectation based on sex and power motives, only then will there be an end to rape ¹⁵.

1.2 Types of Rape

1.2.1 Statutory rape

Statutory rape is unlawful intercourse with a female under the age of consent. The age of consent varies from nation to nation. Most legal system consider the sexual intercourse of females below the age of consent as a protection to young unmarried girls. in some societies

including Ethiopia, where virginity is considered as an essential asset in marriage, statutory rape is associated with the defloration of a girl and is taken very seriously. Because the victim will suffer with physical and psychological injury, it is also dishonour to the family and it may also spoil the future possibility of the girl's marriage. statutory rape laws like incest laws, are ostensibly designed to protect young females from sexual and statutory rape by definition the consent of the victims is irrelevant and proof of the prohibited acts and relationship or age of the victims is sufficient to sustain conviction the age of the consent varies from nation to nation. However, it usually ranges between the age of 10 to 18.¹⁶

1.2.2 Marital rape

Much of the scholarly attention that has been given to marital rape has emerged from the legal community. This has occurred because through out the history of most societies, it has been acceptable for men to force their wives to have sex against their will. The traditional definition of rape in the united states most commonly was "sexual intercourse with a female not his wife with out her consent "which provide husbands with an exemption from prosecution for raping their wives –a "license to rape." The foundation of this exemption can be traced back to statements made by sir. Matthew Hale, chief justice in the 17th century England. Hale wrote, "The husband can not be guilty of rape committed by him self up on his lawful wife, for their mutual matrimonial consent and contract, the wife has her self in kind unto the Husband whom she can not retract." ¹⁷

This establish the notion that once married, a women does not have the right to refuse sex with her husband. This rational remained largely unchallenged until the 1970's. When some members of the women's movement argued for the elimination of the spousal exemption, because it failed to provide equal protection from rape to all women. The existence of some spousal exemption in the majority of states indicates that rape. This perpetuates marital rape by conveying the message that

such acts of aggression are some how less reprehensible than other types of rape. Importantly the existence of any spousal exemption indicates an acceptance of the archaic understanding that wives are the property of their husbands and the marriage contract is an entitlement to sex.¹⁸

Until 1970 when some members of women's movement argued for the elimination of spousal exemption because it failed to provide equal protection against rape to all women and some countries have made amendment to their laws making marital rape a chargeable offence, that is reasonable criticisms from human right perspective, has come to out date the rejections of marital rape line of argument and accept material rape as chargeable crime. Fore example in New Jersey and Oregon (in U.S.A), marital rape is punishment under their law.

As the Ethiopian penal law defines rape as an act of having sex by a man with a women who is not his lawful wife and without her consent, in Ethiopia and in other countries which adopt similar legislations, the controversy on categorization of marital rape is still not given legal recognition and totally ignored. ¹⁹

1.2.3 Forcible rape

Is "un lawful sexual intercourse with a female with out her consent. Included are rapes by force and attempts or assaults to rape". Or while the victims is unconscious. It involves two important elements, namely vaginal penetration, and force or threatened force which compels the victims to submit to the demand of the offender. "To constitute an offense the penetration need only to be slight and the law does not require proof of seminal emission."

Types of forcible rape

A. individual rape :- is an act of rape done by an individual rapist the victim might or might not have been known to the rapist.

B. Multiple rape (mass rape):- is a sexual assault against an individual woman by a group of men. This type of violence is

devastating humiliating and destroys the victim physically, socially and mentally.

C. Repeated Rape:- many victims are subjected to repeated rapes on different occasions because of their living conditions. Mostly prostitutes, street children and refugee women are victim of repeated rapes.

D. Rape of children:- is the sexual molestation of children by adults either by family members, relatives or others.

E. Sexual Harassment:- is a sexual contract that is unwanted or a forced act against the will of a woman. Most women are victim of sexual harassment in their working places. Society normally does not recognize this as harassment. The willingness of a woman is assumed is such. ²⁰

1.3 Essential elements of rape

In most legal systems as well as Ethiopia's the conviction of rape depends on the fulfillment of three elements; sexual intercourse, force and the commission of the act against the will of the victim. ²¹

1.3.1 use of force

The definition of rape as the unlawful sexual inter course with a women by a man with out her consent or against her will signifies the existence of force or compulsion. In all cases where the victim is physically and mentally capable or making resistance, force is a very essential ingredient of the crime of rape. ²²

There is however, no particular amount of force necessary for the commission of rape; as far as women against whom it was committed had reason to believe that resistance is dangerous or even absolutely useless. Thus the use of force and violence which are constituent elements of the crime of rape are taken in a relative term. The relative strength of the parties, age physical appearance should be taken in to

account to speak of the existence of enough force to subject the female to and put her under withstanding her position.

The term “by force” seems to imply actual physical force. But this is not necessarily the case. It may even mean threatened force or violence if the female fails to comply with the needs and demands of her assailant. ²³

Force can, therefore, be actual or constructive. Constructive to the commission of offence. Ejaculation of semen is also not a required condition. However, the presence of semen is clearly important in proving the elements of sexual offence, as is other scientific evidence recovered from the victim, the offended and scene etc. ²⁴

1.3.2. Lack of consent

Lack of consent is one of the elements of rape; consent is a bar to prosecution in crimes of violence other than rape, and the focus on the victim’s behavior before, during and after the alleged rape primarily to establish non-consent particularly.

The consideration of lack of consent can be seen by focusing on the behavior of the accused at the amount of the crime. It signifies the existence of resistance on the part of the victim due to the employment of force or grave intimidation by the offender to get access to unlawful sexual intercourse. The need of resistance is necessitated for the establishment of to elements in the crime, i.e. sexual intercourse through force by the offender and lack of consent expressed by resistance of the victim. To put it in other words, a crime of rape is said to have been committed when there is actual resistance against its commission or when there is justifiable grounds for its absence, not comparable with consent. ²⁵

Through sexual outrage consists of sexual intercourse it is different from rape by comprising an element of consent. The consent however given by the victim in case of sexual outrage does not amount to

free and valid consent. Because consent obtained by violence or given on the basis of reverential fear. Consent is sustainable at law only when it is given by a women who is capable under the law i.e. a women who attains the age of majority and who is in a free and unconstrained possession of her physical and mental power to act in whatever manner she desires.²⁶

1.3.2. Sexual inter -course

Sexual inter course is said to be performance even when the complainant's hymen remained intact or the accused has not emitted the semen. Sexual intercourse presupposes the existence of penetration of the female sex organ with the male sex organ. But the penetration need not be full. The slightest insertion of male sex organ in to the body of the female is sufficient to constitute intercourse. It could be any degree of penetration of even the anus. However, intercourse does not mean a mere contact of the sex organ of the male and the female. The entering of the male sex organ in to the labia of the female sex organ is what is meant by sexual intercourse for the conviction of rape. In the case of virgin; there is no need of the rupture of hymen. The only thing that is the essence of sexual intercourse in this offence is the slightest penetration of the male organ on the private parts of the female.²⁷

Ejaculation of semen is also not a required condition. However, the presence of semen is clearly important in proving the elements of sexual offence, as is other scientific evidence recovered from the victim, the offender and scene etc.²⁸

1.4 Influence of rape

1.4.1 Culture and tradition

There are some traditions that support the abuse of women which has the effect of systematically damaging women's health and strength to make sure of their subordination to men. Cultural relativism dominates social, political and academic thought and it serves as a justification of

many in human social practices. Women are entitled to the protection of their fundamental rights but society as well as the legal machinery regard rape and as less serious offences than other human rights violations. ²⁹

1.4.2. Poverty

Poverty drives women and children in to commercial sex and streetism, which makes them vulnerable to sexual exploitation, abuse and rape. As early marriage and poverty are rampant in the rural areas, women migrate to towns and cities where they will either become maid servants or join the commercial sex industry. They are, more often than not, raped in these places where they make their living as prostitutes or even at the home where they serve as maids. ³⁰

1.4.3. Family Break down

Family is the basic foundation of a society. The love of parents, discipline, moral teaching, confidence and the material and emotional security which should be given to the child, by the family are the basic needs of the child which are necessary for his growth and development. If these are not fulfilled it is reflected in his behavior in latter years. Many criminals or sexual deviates (rapists) come from broken homes. ³¹

1.4.4 Rape as a weapon of war

Rape is often used to punish or intimidate those who rebel. It is used as a political military weapon either to punish or intimidate those who rebel. The logic is to hurt women in order to teach men a lesson. Brutality against women is inevitable in any conflict situation. Aserb fighter was quoted on the International Herald Tribune as saying “my friends and commanders advised me to rape the Moslem women because it is good for raising a fighter’s morale, so I raped Moslem women and killed them after wards.”³²

1.4.5 Lack of awareness

Many Ethiopians at the grass root level are not usually aware of the basic human rights, that all human beings are equal regardless of their sex, race, color, ethnicity or religion. They are not aware that rape is the most dehumanizing, destructive and degrading acts one can commit against another. They are not aware that the psychological trauma can never be wiped out from the unconscious mind of the victim. ³³

1.4.6 Lack of access to legal information

Women are not aware of their legal rights and as result they don't sue. The rapist far his criminal act many are ignorant and don't know where to go when they have become victim of rape. Neither do they have the means to pay for legal service. ³⁴

1.4.7 Other like porno grapy

Films and literature on sexual violence influences young people to commit on act displayed in films or prints.³⁵

1.5 consequences of rape on the victim

Rape victims can sustain severe physical damage which some times might even lead to death. They can also be victims of sexual transmitted discussed like HIV virus. They can be beaten to death or can be killed during the act. They also face the problem of un wanted pregnancy and abortion. Some of the emotional effects could be fear, phobia, feeling of in competency, self hatred and moral deviance.³⁶

1.5.1 Social implication

The consequences of rape has asocial stigma and victims of rape are considered as vulgar and promiscuous. They are blamed for the immoral act and loose respect and dignity by society. As a result they alienate themselves from society. In rural areas when a women is

abducted and raped, she will no longer get a husband unless her rapist marries her, which of course will add to her misery. She will run away to cities where no body knows her, only to face prostitution, streetism and other social problems.³⁷

1.5.2 Economic Implication

Rape victim drop out of school because of fear of being victims gain. As a result they will not have a proper education. If women are not educated or do not have skill training they can not participate in the national development program. Thus both individuals and the society in general will be negatively affected. ³⁸

1.5.3 Psychological Implication

Victim of rape is sustain deep psychological damage that can never be treated or redressed with money or precious gifts. Some real cases from Ethiopia and other Africa countries were cited to support the above contention. Though the complication of rape vary enormously depending up on age, culture and other related factors, it leaves the victim, their family as well as their communities with enormous psychological trauma. Other forms of torture and ill –treatment that are always accompanied by rape, leave the victim scarred for life. Above 90% of the victim suffers some degree of physical injury and threats Violence compounded by the presences of weapons and intimidating verbal abuse. As result the following are some possible psychological consequences which raped women and children face.³⁹

Fear and phobia, repressed anger leading to over whelming depression and anxiety, feeling of guilt, self blame, loss of control over one self immunes shock and disbelief, confusion, difficulty in making decisions, hatred forward men, diminished self-esteem, Filings of worth lessens, fear of being alone, disobedience aversion to sexual

Inter-course, thoughts of suicide, desire revenge etc. at least two or three of these emotional disorders occur in any given victim. It is also easy to imagine how horrendous the outcome will be when it happens to physically, psychologically and mentally immature children.⁴⁰

CHAPTER TWO

2. Rape under international and national legal instruments

2.1 International instruments.

The United Nations charter was the first international document to explicitly affirm the equal rights of men and women and to include gender as one of the prohibited ground for discrimination (along with race, language and religion). These guarantees were repeated in the universal declaration of human rights (UDHR) adopted by the general assembly in 1948. Since that time equal right for women have been expressed in a large number of international human right treaties most notably the international convention of civil and political rights (ICCPR) and international convention of economic and cultural rights (ICESCR). Convention of the elimination of all forms of discrimination against women (CEDAW) which was adopted by the General Assembly of the United Nations in 1979 and entered in to force in 1981 is the first international agreement that exclusively addresses women's rights. ¹

The convention primarily defines discrimination against women as “any distinction, exclusion or restriction 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 material status, on a basis of equality of men and women, of human right and fundamental freedoms in the political, Economic, Social, cultural, Civil or any other field”² .

The phases identifies areas where there is discrimination against women, in the area of political rights, marriage and the family and employment. It also emphasizes that discrimination will hamper economic growth and prosperity. ³

The scope of violence against women especially in the family had been concealed for so long that its seriousness had not attracted

international attention until recently. It is only in 1975 at the world conference of international women's year held in Mexico city, that the issue of conflict with the family was raised. ⁴

In the past few decades, in particular since Gender-Based violence was first established as a development issue at a UN's Decade for women at its meeting of 1985, women's Groups and individual activists across the world have campaigned vigorously against violent acts directed against women. With continued efforts of pressure groups and activities, women's issues have increasingly captured the attention of international community, which resulted in the recognition of violence against women as a human rights issue by the UN in 1993. Thus the UN General Assembly in its resolution 48/104 of 20 December 1993 adopted the Declaration on the Elimination of Violence Against Women /DEVAW/which is an important milestone in the advancement of the protection of women right.⁵

The declaration on violence Against Women (DEVAW) defines violence against women as “any act of gender based violence that results in, or is likely to result in, physical, sexual, or psychological harm done towards women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.” ⁶

The declaration refutes the distinction between the violence committed against women in public and private spheres declaring for the first time that women must be protected from violence committed against them both in the privacy of their home as well as in public. It recognizes discrimination against women in public and private life, and a means by which male dominated institutions constrain women's rights. The definition of violence in this document encompasses three areas. These are. ⁷

Violence in the family: - domestic violence including battering, marital rape, incest, traditional practices, including female genital mutilation, son preference, early marriage, dowry- related violence and penalties such as stoning or flogging under religious or customary laws ⁸

Violence with in the community:- rape and sexual assault; sexual harassment in the work place, abduction, sexual abuse, sexual harassment and intimidation at work and in educational institution, and else where, forced prostitution: trafficking for the purpose of prostitution or domestic labor; violence against women migrant workers; and pornography which is linked to violence against women; ⁹

Violence perpetrated or condoned by the state:- custodial violence, including rape and other sexual assault and beating; violence against women in situation of armed conflict; and violence against refuge and internally, displaced women. ¹⁰

The declaration details legislative, educational, administrative and other actions to be taken by states which includes responsibilities to :

- Exercise due diligence to prevent, investigate and punish acts of violence against women;
- Develop penal, civil, labour and administrative sanctions in domestic legislations to punish and redress wrongs caused to women who are subject to violence;
- Consider the development of action plans to promote the protection of women against all forms of violence;
- Work to insure, to the maximum extent feasible that women who are victims of violence and their children and have specialized assistance such as children counseling shelter and other health and social services;
- Take measures to ensure that law enforcement bodies and public officials responsible for the implementation of polices to receive training to sensitize them to the needs of women;

- Adopt appropriate measures to modify the social and cultural patterns of conduct to eliminate prejudices and practices that are based on the inferiority and superiority of either of the sexes;
- Promote research and data collection relating to the prevalence of different forms of violence.

The DEVAW is the most explicit statement of international norms related to violence against women. Though not legally binding, the document represents international consensus on government obligations to eliminate violence against women and affirms norms, which are legally binding, either under specific human rights treaties or as customary international law. Therefore an act of rape is some of the prominent violence against women that could result in physical, sexual or psychological injury to women as also discussed in chapter one of this paper. So obviously the spirit of DEVAW is to act against such crimes.

Sexual violence and rape were, for the first time recognized as international crimes against humanity by the charter of the international criminal court and by the statute of the international criminal court. Art.7.of the statute of international criminal court defines “crimes against humanity” as any of the act listed under the provision when committed as a part of a wide spread or systematic attack directed against any civilian population, with knowledge of attack. ¹¹

The list under Art.7 (g) includes rape, sexual slavery, forced prostitution forced pregnancy, forced sterilization, or any form of sexual violence of comparable gravity.

Art.7(2) (f) also recognizes forced pregnancy as a crime against humanity. Under this provision “forced pregnancy” as unlawful confinement, of a women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violence of international law. This is recognition of one of the severe type of violence a women is exposed to because of the social group she belongs to. Recognition of sexual violence as an international crime against

humanity is another major milestone in the recognition of acts of violence against women as severe abuse of human rights. ¹²

2.2 other Countries Laws of Rape

Criminal Law of Rape in India

The definition of Rape as given in the Indian penal code 1860, As per section. 375 of IPC a man is said to commit the crime of rape with a woman under the following six circumstances:

1. Sexual intercourse against the victim will,
2. without the victims consent,
3. with her consent, when her consent has been obtained by putting her or any person that she may be interested in fear of death or hurt,
4. with her consent, when the man knows that he is not her husband,
5. with her consent she was intoxicated, or is suffering from unsoundness of mind and does not understand the nature and consequence of that to which she gives consent,
6. with or without her consent when she is under sixteen years of age.¹³

Further explanation provided to the section states that penetration is sufficient to constitute the offence of rape, whereas the exception leaves out marital rape all together if the wife is not under fifteen years of age.

Section .376{A} punishes sexual intercourse with wife without her consent by a judicially separated husband.

Section. 376{B} punishes sexual intercourse by a public servant with a woman in custody.

Section . 376 (c) punishes sexual intercourse by superintendent of jail, remand house, etc. whereas,

Section. 376(D) punishes sexual intercourse by any member of the management or staff of a hospital with any women in that hospital. ¹⁴

Criminal law of rape in Germany

Offences of rape and sexual coercion are defined by section 177-179 of the penal code according to which they are punishable if a person using force or threat of physical violence a person to have sexual intercourse or engage her/him in other sexual acts. According to the Germany law rape is punishable from not less than two years if the rape resulted in death even if the perpetrator didn't cause the death intentionally. Furthermore, acts of sexual abuse in counseling, treatment or support relationship have been criminalized by Penal code's amendment of 1998.

Section 174c says that the rapist must refrain himself from any sexual relationship with his patients. In the event of violation of this provision he can be also banned from practicing his profession in order to prevent further offences.¹⁵

As regards criminal proceedings section 68(1) of the code of criminal proceedings provides for special protection of the victim of sexual abuse from on going unnecessary emotional trauma during the criminal proceedings. Therefore, questions that could lead to revealing of other facts of sexual nature from private life of the victim or her family can be posed only if it is indispensable. Taking in to consideration the same reason, it is possible for the court to ask the defendant to leave the court room during the victim's testimony if there is a fear that the victim might be not truthful or his/ her mental state can be influenced by the defendant's presence.

The act of 1998 to protect witness in questioning in criminal proceeding and to protect provides for the use of video in criminal proceedings and to improve victim protection provides for the use of video in criminal proceeding thus the victim can be protected against stressful procedure of direct testimony thus the victim can be protected against stressful procedure of direct testimony and against the contact with the offender.¹⁶

The Act of 1998 to protect witness in Questioning in criminal proceedings and to improve victim protection provides for the use of video in criminal proceedings thus the victim can be protected against stressful procedure of direct testimony and against the contact with the offender. Act on settlement between offenders and victims in criminal law gives the possibility to discontinue criminal proceedings if the settlement between the offender and the victim is reached. (Also section 1 55a of the code of criminal procedure).

Prostitution is legalized in Germany and the profession is subject to legal protection against Coercion and exploitation (section 180), living off Immoral earnings and trafficking in Human beings (section 180b and 181). Sexual exploitation and incitement of a person less than eighteen years of age are punishable up to three years or fine.

The act regulating the legal situation of prostitutes of 2002 improved further the legal and social situation of prostitutes by enabling them the access to social situation of prostitutes by enabling them the access to social insurance and agreed wages.¹⁷

2.3. National Instruments

The F.D.R.E Constitution

The EFDRE constitution of 1995 deals with the fundamental rights and freedoms in two parts i.e. part one deals with Human rights from arts 14-28 and and part two with democratic rights Arts 29-44. These rights are so basic that every modern constitution must enshrine them. All the legislative, executive and judicial organs of both the federal and state governments are duty bound to respect and enforce this rights.¹⁸

Under Art.13 provides that the fundamental rights and freedoms specified in the constitution should be interpreted in accordance with international covenants on human rights and international agreements ratified by Ethiopian. These include those international agreements on

the protection of human rights in general and on the protection of women's right in particular. ¹⁹

According to Art 25 of the constitution, all person are equal before the law and be entitled with out any discrimination including sex to the equal protection of the law. Which means the law doesn't make any discrimination between persons and makes equal protection to all. Difference of sex, colour, and language shall not account and their rights shall be protected equally. ²⁰

Rape is an experience, which shakes the foundation of the lives of the victim. For many its effect is a long-term one, impairing their capacity for personal relationship, altering behavior and values and generating fear. ²¹

The interest violated by the crime of rape may be described generally in terms of sexual autonomy and sexual choice. The argument must begin from the proposition that our own: it is our private zone and respect for privacy and personal autonomy both support this. As a result it could be said that each individual has the right not to have other's sexual choice imposed on him or her.²² Sexuality is an intrinsic part of one's personality, it is one mode of expressing that personality in relation to other's, and its therefore fundamental that one should be able to choose whether to express one self in this way-and, if so, towards and with whom. ²³ the essence of such self-expression is that it should be voluntary. Thus, even where a sexual assault involves no significant physical force, it constitutes harm in the sense that it invades a deeply personal zone, gaining non-consensually that which should only be shared consensually.

According to this argument rape is violation of constitutionally guaranteed rights of individuals, such as: "the right to protection against bodily harm: the right to respect for human dignity, reputation and honour and the right to privacy."²⁴

In line with this Art .16 of the constitution also says every one has the right to protection against bodily harm, including rape. When a

woman is compelled to submit, to sex, she may resist which usually results in bodily harm as a result of the struggle. ²⁵ here we can note, that both rights are being violated there fore, the right to liberty and the right to be protected against bodily harm which is constitutionally guaranteed.²⁶

The constitution specifically provides in Art. 34/2/ that married shall be entered in to only with the free and full consent of the intending spouse. This article shows the equality in marriage. Those who have attained the marriageable age have the right to marry. Hence , the right to liberty that Is recognized in the international documents and national constitution is protected by subsidiary legislations, including the penal code. Therefore rape is an affront to the liberty of the victim and is not an ordinary offence but aggression against the most fundamental human rights there by challenging the constitutional rights of individuals.²⁷

Under Art. 25 of the constitution, all persons are equal before the law and are entitled with out any discrimination including sex to the equal protection of law Art.35 of the constitution in particular listed a number of ways in which women should freely enjoy their human rights and freedoms these are

- Equal rights with men in marriage while entering and at the time of divorce
- The right to be protected from harm full customs, laws and practice
- The right to equality in employment, promotion and the transfer of pension entitlements.
- The right to access to family planning, education, information and capacity. ²⁸

Criminal Law of Ethiopia

A few decades ago, rape was viewed as a private problem affecting only a few women, however, its prevalence has been increasing from time to time almost throughout the world. ²⁹

Now it seems that rape is considered everywhere as a major social and public health concern and human rights issue. Many societies in the world still have maintained patriarchal values and consequently believe that women are there to serve the interest of men. It can be said now that the prevalence of rape has gone even beyond.

Our imagination since children of 2 years of age or even younger are being raped frequently.

Art .620 of the criminal code that deals with the crime of rape provides that-1. who so ever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment for five years to fifteen years .

2. where the crime is committed:

/a/ on a young women between thirteen and eighteen years of age, or

/b/ on an inmate of an alms-house or asylum or any establishment of health, education correction, detention or internment which is under the direction, supervision or authority of the accused person, or on any one who is under the supervision or control of or dependent up on him , or

/c/ on a women incapable of understanding the nature or consequences of the act, or of resisting the act, due to old-age, physical or mental illness, depression or any other reason, or

/d/ by a number of men acting in concert, or by subjecting the victim to act of cruelty or sadism, the punishment shall be rigorous imprisonment from five – twenty years.³⁰

There is an improvement in the newly amended criminal code regarding the penalty of rape as the minimum punishment is five years and under aggravated circumstances the penalty could go up to twenty years imprisonment. One of the aggravating circumstance for rape under the 1957 penal code was if the victim is under 15 years of age is but now it has been amended and the current and the current law provides that

the penalty will be aggravated if the victim is between the ages of 15-18 years. The amendment also provide that that if the rape resulted in the transmission of HIV/AIDS , or grave injury or death of the victim the accused will be charged for concurrent offences under the relevant provision of the criminal code.

Rape committed on girls below the age of 15 years is dealt with under separate provisions under the new criminal law which is art. 627 provides that committing rape on a girl who is below 13 years of age is punishable with 15-20 years rigorous imprisonment. According art. 627/3/, if the act resulted in grave physical injury or death of the victim the penalty will be life imprisonment.³¹

This provision accords a major protection to young girls from rape. Under the 1957 penal code, the maximum penalty for such offence was 15 years and the previous law did not address issues like severe physical injury or death of victim due to the rape committed on her.

Rape in marital relationships, known as marital or spousal rape, is not recognized under the amended criminal law. Thus the compulsion of a women for sexual intercourse by her husband (by violence, grave intimidation, by rendering her unconscious or influence) does not make him criminally responsible as long as the victim is legally married to him.

The commission of rap in marital relationships might entail criminal Responsibility only in case of art .514 of the criminal code that criminalizes the willful and negligent transmission of a disease (which obviously includes transmission by sexual intercourse) that cause the death of the victim.

The prevalence of marital rape in Ethiopia is not known due to legal, social, cultural and religious barriers that inhabit the victim from reporting and the amiability of a nation wide study. However , the fact that it is committed and possibly exposes women to HIV virus is undeniable in light of the fact that women do not have or lack control over their sexual lives in material relationships and the high probability that their spouses involve in high HIV risk sexual behaviors as such

behaviors are tolerated or justified by socio cultural and even religions norms and attitudes.³²

The different cultures , traditions and religious that operate in most communities in Ethiopia dictate that women are subordinate to their husbands in marital relationships. This attitude is so deep-rooted that it is commonly accepted by women themselves, most of whom, believes, most of whom, believe that they should serve and obey their husbands in all family matters including sexual feelings to their husbands or the type of sexual behavior they prefer and expect from their husbands. They just perform sexual intercourse in a manner their partners choose they do not resist un protected sexual behaviors of their husbands or do not negotiate protected sexual performance with their husbands.³³

Though an improvement had been made on the rape provision of the criminal law, the definition of rape is still narrow, it is still does not consider marital rape as a crime and the penalty for rape is not that much higher than it used to be.

Civil law

Art .2114 of the civil code, provide

/1/ where a person has been sentenced by a criminal court for rape of indecent assault, the court may award the victim fair compensation by way of redress.

/2./ in such an event, fair compensation may also be awarded by way of redress by the court if the person is sentenced by the court if the person in sentences by the criminal court of rape. Besides, the husband of the victim or the family of the girl, who has been raped, may also be entitled to compensation. The law has given equal protection to the victim, to the husband of the victim or to the family of a girl who has been raped.³⁴

As rape results in moral injury on the victim as per Art. 573/1/ of the civil code, the compensation for moral injury does not exceed 1000 Ethiopian Birr. The moral injury, which the victim of rape sustains, may

subsist for life and, would be difficult to evaluate such injury in terms of money.³⁰ art .2019 of the civil code also states that the damage to be paid to be equal to the damage caused. It is unreasonable to be live that 1000 birr compensation to be paid for a victim of rape who sustains moral damage that subsists for life is fair. The 1000 Ethiopian birr compensation might have been a good deal at the time when the code was drafted 1960,s but not now. 1000 Ethiopian birr is small amount of money today. hence, such amount to be paid as a compensation for moral injury to the victim of rape must be amended so as to fit the damage in away the sum paid by way of compensation reflect the financial situation of the time.³⁵

As we have tried to see rape in international and national laws rape is a serious violation of human right of women.

Chapter Three

Evidence hearing and conviction of rape with particular emphasis in Lideta sub city.

3.1 Incidences of Rape

Table A

Statistical data of Rape Reported to the Lideta sub city police department from 1994-2001 nine months.

| Year | Below the age of 18 | | Above the age of 18 | | Sum |
|---------|---------------------|--------|---------------------|--------|-------|
| | No. of Rape cases | % | No. of Rape cases | % | |
| 1994 | 16 | 42.11% | 22 | 57.89% | 38 |
| 1995 | 14 | 33.33% | 28 | 66.67% | 42 |
| 1996 | 19 | 45.24% | 23 | 54.76 | 42 |
| 1997 | 23 | 43.4% | 30 | 56.6% | 53 |
| 1998 | 29 | 58% | 21 | 42% | 50 |
| 1999 | 37 | 58.73% | 26 | 41.23% | 63 |
| 2000 | 48 | 70.59% | 20 | 29.41 | 68 |
| 2001 | 32 | 64% | 18 | 36% | 50 |
| Total | 218 | | 188 | | 405 |
| Average | 27.25 | | 23.5 | | 50.63 |

Source:- Lideta sub city police department and the author's calculation.

Table A indicates the total rape cases reported to Lideta sub city police department as classified in to two categories: victims of rape below 18 years of age and above the age of 18. It can be understood from the table that the rape cases reported has been increasing over the past 8 years time from 1994-2001 nine month a total of 405 rape cases were reported during this time. On average every year about 50.63 cases have been reported since 1994 for both below and above 18 years of age.

Table A also indicates that every year on average about 27.25 cases involve victim under the age of 18 years and the rest 23.5 cases involve those whose age is greater than 18. Besides, during the early years shown in table “A” higher proportion of the victims were those who are above 18 years old, however, progressively this proportion has shifted to those who are under age. That is during the later years the majority of cases reported to police are committed against children who are below 18 years old. The increment on the rate of case reported to police could be attributed to the rise in the rape cases committed or due to the increment in the degree of awareness of the public to report to police or a combination of both.

Whatever be the reason of the fact is the rape cases are at the higher rate and more severe against under age children. This is a serious matter which cannot be left for tomorrow and should be resolved and should be given a priority by the concerned authorities.

3.2 Process of investigation

Investigation is a means by which the facts of a case are ascertained to arrive at a true conclusion as to whether a crime is committed and who, committed. It also includes all proceedings for the gathering of evidence conducted by a police officer or by any other person who is authorized for doing so.¹

Investigation is of a nature that requires “step by step follow up through patient inquiry or observation to search, examine and inquire into with care and accuracy to find out by careful inquisition, examination, the taking of evidence, and a legal inquiry” by the authorized unit. These steps or modes of investigation are used by the investigator as a tool for establishing the guilt of the accused.²

The process of investigation of cases of rape by the police starts once the crime has been reported to the police. According to article 24 of

the criminal procedure code, the investigation officer is required to get, from the person who made the accusation, all relevant facts and dates, the name or description of the offender, the names and addresses the principal witnesses and all other relevant evidence which may be available and record them investigation of police files have shown that this details are records as required by law. ³

One of the crucial function of an investigation is together evidences which are so essential and relevant to support the case and sustain a conviction. Investigation of sex crimes, consists of several routine procedures which are required to be under taken by the investigator.

In attempting together supporting evidences these more or less include searching for a crime scene; medical examination and interrogation of witnesses.⁴ Medical evidence forms are one of the cornerstones of any rape case if the victim agrees to a medical examination. The police rely on them to form opinions regarding bail, to follow the case earliest or to give it a less follow-up, for example if the medical report of a rape victim states that her “hymen” is intact, or old hymnal tear the law enforcement bodies give a less attention as compared to the medical report of recent hymnal tear, as the result of recent sexual intercourse of rape case. Where the medical evidence states that victims “hymen” had been torn as a result of recent sexual intercourse, the public prosecutor and the courts attach ample credit to medical evidence.⁵

In the interview made with Yemsrach Gezahagn investigator of crime on women and children violence on the Lideta sub city police department on may 3/9/2001 E.C. she said that, victims of rape do not report immediately when the act is committed, they report late or even after a month or when they became pregnant. However, they reported after they became pregnant or after a month or two months and above then, the medical result report will be old hymnal tear or pregnancy and

the necessary circumstantial evidence that may help to investigation is damaged.

In such case the public prosecutor will tend to reject the case based on criminal procedure code Art. 42, that is the power of the public prosecutor to return back the investigation file due to lack of sufficient evidence, she added that very rare recent rape cases are reported to his station. Now a days rape is considered not less than murder, rape is considered among the serious crimes and is given priority for investigation with the police.

She added that also on cases of rape mostly bail allowed by the court. With a small amount of surety if the suspect knows that he can not escape from the penalty, most of the time, he disappears. The women's rights activities in nowadays are rising a question "why the court gives the right of bail for suspects of rape" so, the police tired to solve this problem, by attempting to investigate the rime of rape as fast as possible, and maintain balance between the constitutional right of bail of the suspect, and the protection of the right of women to bring the rapist before court.⁶

3.3 Hearing of evidences

Rules of evidence in criminal cases require the minimum evidence a prosecutor must have to prove his case. If he fails to discharge this burden, i.e., where the evidence is not sufficient enough to make out a prima-facie case up on which a reasonable judge, could find that the contents of the charge have been established to exist, the other party is not required to defend himself. In criminal cases, for reason of minimizing erroneous conviction, the effect of which is irreversible, and constitutional pressure like presumption of innocence, the standard of proof is very high. The formula used is that of proof "beyond any reasonable doubt" rather than the absolute standard of proof "beyond any doubt", which may provide the best protection to the accused. The

problem with adopting this absolute standard of proof is that, it will be too difficult to obtain conviction of offenders.

In accordance with a fundamental principle applicable in criminalities, the evidence must be sufficient to show the guilt of the accused “beyond reasonable doubt.” In legal terms the burden of production of evidence requires apparently to introduce evidence of sufficient quality and weight that a reasonable and fair mind in the exercise of impartial judgment might find in favor of the party.⁷

Investigation of cases

Case – 1

File No 85386

Public prosecutor vs Bruh Tesfaye

On February 14/7/1999 a 23 years old young man in Kirkos Sub city, Kebele 15/16, Local name of the place called ‘Barka’ raped a minor 12 years age. The public prosecutor filled the charge in Lideta Federal First Instance Court according the Article 627(1). The accused denied the charge, and then continued the witness of the public prosecutor hearing Evidence.

The first witness for the public prosecutor is the victim and she testified, the accused was pulled and kidnapped her and she entered in to his house by force who smoking drug to her and raped. After he raped she bleed. When the accused heard the voice of her mother and grand mother, to wears her cloth and pushed outside from the house and she got her mother and grand mother out side the house, she told to them all what she happened. The other witness also testified, after they go to in to their house, they have seen blood on the punts of the victim, after that they go to Hospital and Police station.

The medical examination confirmed that she was raped. Therefore, the court believed that the witness are proved the case according to the charge of public prosecutor and continue the defendant witnesses. The

defendant witness are testified, when as the time of committed the crime, the accused who studied children. The witness id the defendants the children to who studied and their families.¹⁰ Then after the court hearing the evidence of both parties the court is set free the defendant, because, the court believed that the accused defense the evidence of public prosecutor.⁸

The writer of this paper does not agree with the decision of the court. Because the defendant witnesses testimonies can not believe and contradictory each other. For the detail explanation can see the case annex at the back but, I will try to show, where the contradictory party in short.

1. The 2nd defendant witness testified that the accused was studied to us from monody to Saturday. But the mother of the 2nd witness is testified, he was studied from Monday to Friday.
2. 3rd witness of the defendant testified, that after he finished to studied for us who watched American commode film. But the mother of the 3rd witness, she said that he watched Amharic film.
3. According to the defendant witnesses Testimonies, the accused studied children on two different houses, always from Monday to Saturday on the one house he studied from 11.30-12.30, in the other house also who begins from 12.30-2.30. from Monday to Saturday. When we see in this point, why not the defendant is need time to rest and to transport to goes from one house to the other house? How can believe it this Testimonies? We can understood from this case the witnesses of the defendant were It seems studied the testimonies to intentionally and targeting to set free for the defendant. There for, the court can not properly examine the Evidence hearing.

But the public prosecutor took the case on appeal to the Lideta federal high court and the high court gave a decision that the evidences show rape has committed by the accused and the accused is imprisoned

is for 15 years. From this case we can understand that different courts give different weight to the same evidences.

Table B. Statistical data of Lideta public prosecution office on Rape cases

| Year | Number of investigated rape files presented to prosecution office | Rejected by public prosecutor | | Cases in which the accused is convicted by court | | Cases dismissed by court | | Withdrawal for different reasons | |
|---------|---|-------------------------------|---------|--|--------|--------------------------|-------|----------------------------------|-------|
| | | NO | % | NO | % | No | % | No | % |
| 1997 | 85 | 14 | 16.476% | 30 | 35.29% | 19 | 22.35 | 22 | 25.88 |
| 1998 | 105 | 41 | 69.05% | 22 | 20.95% | 23 | 21.9 | 19 | 18.09 |
| 1999 | 80 | 38 | 47.5% | 25 | 31.25% | 10 | 12.5 | 7 | 8.75 |
| 2000 | 98 | 47 | 47.96% | 23 | 23.47% | 15 | 15.31 | 13 | 13.27 |
| Total | 368 | 140 | 38.04% | 100 | 27.17% | 37 | 18.21 | 61 | 16.58 |
| Average | 92 | 35 | | 25 | | 16.75 | | 15.25 | |

Source:-Lideta prosecution office and authors calculation.

Table B. indicates that the number of cases brought to courts has been rising in the last four year on average cases are sent to prosecution office in every year. Majority of cases used to get rejected by the public prosecutor /38.04%/ followed by a significant proportion of them convicted by court /27.17%/ some of the also were is dismissed by court /18.21%/ and about 16.58% of the cases were dropped from the process of prosecution due to various reasons.

Table B. indicates in general that majority of the cases are either rejected the public prosecutor or dismissed by the court, this phenomenon des not seem to discourage the potential crimes of rape nor encourage the public to report such kind of crime to the concerned authorities such as the police. In the interviews made with Akberet Haile public prosecutor of Lideta federal first instance court on may 19/9/2001 E.C regarding the problems about the failure of cases of raped due to lack of evidence. She said that after the victim reports the commission of rape to the police, peaceful reconciliations and

negotiations for compensations will follow with the family of the victim, and the victim will be obliged to deny her allegation at court, or change address not to give her testimony. And most of the time the victims, do not report on time, due to shy behavior of the victims or because they are afraid to inform their family, then finally report after they become pregnant.

Besides they also keep it secret for not being ostracized from the community. She added that the community gives less attention to rape, the community is not co-operative to prevent crimes of rape, rather if an incidence of rape happens they prefer to reconcile rather than bringing the criminal before the law. Even though the law makes the crime grave, the community gives less weight to the crime of rape. She added that, when incidences of rape occur it takes long time to try the accused and lack of speedy trial also is another reason for the parties to deal with the matter through reconciliation and suspects will get away with the violence of law get the opportunity to escape!!⁹

3.4. Conviction of rape

The purpose of the criminal law is to ensure order, peace and security of the state and its inhabitants for the public good. It aims at the prevention of crimes by giving due notice of the crimes and penalties and reform of criminals.¹⁰

Under the criminal law of Ethiopia the three theories of punishment deterrence, rehabilitation and incapacitating are incorporated. Similarly, the pronouncement of punishment in a rape case is justified on these theories. Among them, however, deterrence is much more applicable since the graveness of the punishment accorded. To rape will deter those potential rapists from materializing their intention.

In practice when a court gives decision of guilty it may look simple But the process leading to it is very difficult, it is very challenging long and full of ups and downs. After conviction for rape the sentence given is not as heavy as the law prescribes for other serious crimes.

Case -2

File – No 115110

Public prosecutor vs Fantaye Eshetu

The young man 27 years old is raped to a 4 year age minor on march 12/7/2000 E.C at 10:00 Pm in Addis ketema sub city kebele 14/21 Local name of the place is called chew Berenda. The public prosecutor filed a charge According to Art. 627/1/. The defendant was convicted and the court sentenced him to 15 years Imprisonment.¹¹

In the opinion of the writer of this paper the decision given by the court is not serious and good enough. Because when we see the old penal code, the law prescribes in the case of minor rape on Art 589 is punishable form 5-15 years rigorous punishment but the old penal code is amended and the punishment of rape case on minor below the age of thirteen years is increased to from 15-25 years rigorous imprisonment. But, even if the punishment is increased in paper, the court could not properly apply in practice.

Case-3

File No 01223

Public procsecutor vs Daniel Abera

Aman in wereda 23 Kebele 10 raped a 11 years age minor. The rape was committed on august 12/11/1988 E.C at 12:30pm. The public prosecutor filed a charge according the old penal code Art 589/2/a/ and 503/2/. When we see the testimonies given to the court, the first witness of the public prosecutor the victim said that after he raped to me I have problem on my kidney and he contacted to me by transmitted diseases. The medical examination also confirmed that she was raped and also contacted a sexual transmitted diseases. so, the defendant was convicted and the court sentenced him to 5 years of imprisonment taking in to consideration the age of the accused.¹² But the court could not have seen the damage of the victim. The other reason also lack of speedy trial have

seen. Because the decision given after 8 years from committed the crime. There fore the court did not give serious attention to the crime of rape. The punishment and the damage of the minor is not balance and the decision is very delay.

Case-4

File No 102479

Public prosecutor vs Fesha Desalegn

The accused 33 years old man raped through anus a minor of 11 years age on august 25/11/1999 E.C at 8:00Pm in Arada sub city, Kebel 11/12 local name is called around Yaread. 'Musica -Bet' School.

Public prosecutor filed a charge according to Art 627/3/ when we see the testimonies, a victim testified that, the accused kidnapping and raped to her through anus. The medical examination also confirmed that, indicates to injured her anus. The new criminal code is to punishable to this kind of crime is prescribe on Art 627/3/ is punishable with rigorous imprisonment not exceeding ten years. Then the court is convicted to the accused and sentenced 1 year imprisonment. ¹³

When we see the above case and other similar cases we have seen in the court, the punishment is not serious and good enough, this shows us that the weight given for the crime of rape and awareness of the objectives of the punishment for the crime of rape is not up to desired level.

There fore courts should follow the criminal law and consider the prevalence of increasing under age victims of rape. One of the objectives of punishment of rape is to deter those potential rapists from materializing their intention, hence, the court is expected to give sever punishment according to the law.

Conclusion and Recommendation

Conclusion

Rape is an act of sexual violence against women. It is one of the most common threats to women's health influenced by many factors operating in arrange of social, cultural and economic contexts. Rape is an ultimate weapon men use to exercise their power over women and to exhibit their alleged natural domination in an act of hostility, power, control, humiliation degradation and attack on a women's body, feelings and whole life, since, in the final analysis, it is a violation of her right through a forceful attack of the most sensitive part of her body.

Rapists usually commit the crime not for the purpose of gratification. It is mainly done to exercise male power over the female. It is the reflection of the society's conception of power relationships between men and women. Based on this social out look, there are offenders who are even proud of their act of raping and deflowering girls.

Generally, violence's against women, particularly, crimes of rape against women is violation of the principle of equality of rights and respects for human dignity are obstacles to the participation of women on equal terms with men in the political, social, economic and cultural life of their countries hampers the growth of prosperity of society and family and makes more difficult the full development of the potentialities of women in the service of their country and of humanity.

Rape has a devastating effect on the victim and may involve physical, psychological and emotional damage. It also distrupts personal social familial and sexual life. Over the past eighty years 405 rape case are reported to Lideta subcity police department. the rape cases become increasing on average every years 50.63 the majority of rape cases are committed against children who are blow 18 years of age on the average 27.25 and above the age of 18 years are on the average 23.5, while the over all rape reporting of rape cases is increasing of which rape against under age women has the higher proportion.

In addition to this there are also problems luck of skilled, trained and sober and competent police that would solve the existing problems and limitations such as improper handling and collecting of essential evidences on rape cases. Due to improver investigation, important evidences at early stage of rape are not presented to public

prosecutors. This can understand from table B in the last four year on the average 92 cases are sent to prosecution office in every year, from this the majority cases used to get rejected by the public prosecution is 38.04%, 27.17 case are convicted by court, while 18.21% cases dismissed by court and about 16.58% cases are with drawl for different reasons.

Other problem is the lack of awareness of the public is also another major stumbling block in the prosecution of the crime. For example deliberated disappearance of the victim or denying previous allegations by giving false testimony in court, because the families of the victims force them give false testimony for the sake of peaceful reconciliations made with the families of the defendant.

Rape case is set to be punishable by server penalty due to the physically injury and psychological trauma that is causes on the victim. But courts usually opt to arbitrarily impose lighter punishment.

Recommendations

1. Awareness creation to societies

- Awareness creation is one of the best solutions to stop violence against women, especially rape. Young victims specially those under 18, trust any man who invites them for tea, or coffee and go along and end up raped and abused ; psychological violence is totally ignored; this shows the society's out look on violence against women needs to be changed and that requires a concredited effort by both government and nongovernmental organizations. In raising awareness the government in particular has an obligation to work on awareness creation programs to bring about change of attitude in the public. Thus awareness creation is a critical activity that needs to be undertaken to bring about the reduction of the crimes of violence against women
- one of the known behavior and good culture of Ethiopians is to resolve conflicts between persons through reconciliations and I shared and believe that it is good culture but it should not apply in cases of rape, which is an aggravated crime committed against women because of their sex. This crime is a violation of the freedom and offender should not be allowed to get a way with it in the name of reconciliation. Women do not benefit from such kind of reconciliations; the only beneficiaries from such kind of reconciliations are the offender and his families. The families of the victim also need the reconciliation, because it is connected with honour of parents of the victim. But ones rape is committed against the victim; she will suffer from the psychological and moral damage and other effects which can not be repaired by reconciliation. Therefore to stop reconciliation and stick to the legal process, continuous awareness creation is needed.

2) Empowerment of women

- Women should empower themselves to speak of their problems publicly. They should use their voices collectively to change the attitudes of those who oppose them. There should be a networking with women associations and women affairs department to fight sexual violence against women.

3) Capacity Building to law Enforcement Bodies

- Most police officers need evidence from the victim rather than using investigation to obtain based on the hints given by the victim tactfully. Developing the skill of investigation of the police requires training and education, and the government is required to give continuous training of the system and tactics of investigation to update police personnel and enable them to be effective in their dealing
- The court also they need attitudinally change and should be given serious attention to the crime of rape and the punishment should be increasing according the law.

4) Improving medical examination on rape cases,

The medical report currently used is only provides whether the hymen is intact or torn and if is torn whether it is an old hymnal tear, or a new one, hence this report doesn't prove whether the victim is raped or not. There is no DNA investigation. This technology is not introduced to our country; hence it is essential to have the technology and it is advisable for our government to introduce the technology.

5) Creating access to legal aid: - Most of our women are economically disempowered; they need free legal aid and support.

6) Establishing Rehabilitation centers and temporary shelters for rape victims, for the purpose of giving food, psychological and medical help for victim of rape.