

PEOPLE AND LEGAL RESPONSE TO VIOLENCE AGAINST WOMEN IN ETHIOPIA

A Comparative Study with USA and India

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CHAPTER VII

CONCLUSION AND SUGGESTIONS

Conclusion

The physical, psychological, moral, self-respect and sexual life of a person are all indeed the issues of human rights that can be infringed in no circumstance. Violence against women, however, denies the right to life, the right to security of person, the right to privacy, the right to liberty, the right to equality and the dignity of a woman as well as the power to control the sexual life of a woman. Violence against women, simply, means male maltreatment against a woman which can result physical, psychological, sexual and economic harm upon its victim. Violence against women is not random violence, but it is gender based violence or violence motivated by gender disparity or violence committed against a woman because she is a woman. Violence against women is a clear manifestation of discrimination against women. That is, it is male prejudice, unfairness, bias or unequal treatment of women that would inhibit the full enjoyment of the fundamental human rights and freedoms of women. The most important forms of violence against women recognized in the DEVAW includes, inter alia, rape, marital rape, abduction, sexual harassment, domestic violence, forced prostitution and women trafficking. Violence against women neither is restricted to domestic life, nor in the public life, but it is an overarching problem that affects the rights of women in the family, in the community and at the state level. Surprisingly enough, nowadays in the world, male abuse against women is, very often, condoned in every community, in every society and in every locality, in a varying degree, all over the world in which we live. In all cases of violence against women, the primary victims are women. It is a global problem triggered upon the lives of women in the world. No society, no community, no family, no religion, no culture, in the world, is immune from violence against women. It is not uncommon to see that women in the world, inter alia, encountered rape, attempted rape, marital rape, sexual harassment, sexual abuse, abduction, domestic violence, forced prostitution and trafficking.

As there is no exception in Ethiopia, violence against women is a common phenomenon, which is by far worse than in the USA and India. Women were and are now suffering from gender based violence which occurs both in the domestic life and in the public life. They suffer from physical, psychological, sexual and economic violence committed by their male counterparts and by the unfamiliar persons. Everywhere, every time women, in Ethiopia, suffer from gender based violence irrespective of the status, religion, ethnic, language and any other grounds of women. The major forms of violence against women, committed in Ethiopia are: rape, including marital rape, abduction of women, sexual harassment of women, domestic violence, forced prostitution and women trafficking.

Even if causes of violence against women are multifaceted, the major causes of violence against women committed in Ethiopia are: patriarchy, cultural practices, poverty and illiteracy. Patriarchy backed by traditional and cultural attitude towards the supremacy of male inflames the practice of violence against women in Ethiopia. Domestic violence, rape, marital rape, abduction of woman for marriage and sexual harassment of women are all partially the results of patriarchal domination, traditional belief and cultural attitude. Even victims of women accept the male in committing domestic violence. Almost 85 percent of women, in Ethiopia, mistakenly support the power of a husband to correct the behavior of his wife, even by using force where she is at fault in the domestic life. Poverty is the serious cause that leads women for gender based violence. True, for the reason of economic necessity, women in Ethiopia, suffer from domestic violence, sexual harassment committed in the workplace, forced prostitution and women trafficking. The lower level of education of women has been also considered as a significant factor contributing to the prevalence of violence against women in Ethiopia. Many people in Ethiopia don't know the laws and the consequential effect of violence against women. Women are also unaware about their rights recognized both in the international and national laws of Ethiopia. Even if they are aware of the violation of their rights, they are reluctant to report their case to the relevant public authority. This is mainly because; the existing laws of the nation are gender insensitive.

To overcome violence against women worldwide, it has necessitated the international community to establish laws that safeguard women against gender based violence. Accordingly, one of the main objectives of the establishment of the UN Charter is to create a violence free world in which the equality, the rights, freedoms, dignity and the human values of women are to be safeguarded internationally. It is obvious that nonviolent world includes the safeguarding of women against gender based discrimination and /or against gender based violence.

The normative value provided under the UN Charter has been also enshrined in the preamble as well as in various provisions of the UDHR. The UDHR has recognized the equality of men and women, which is one of the fundamental principles of international human rights law that should be observed both in the family and in the public life. Further, the UDHR has recognized the right to life, the right to liberty, the right to security of person, the right to freedom of movement, the right to be free from inhuman and degrading treatment. Where there is a violation of human rights of women, as per the wording of the UDHR, women have the right to get effective remedies given by a court of law or by the competent public authorities having judicial authority.

The human rights of women relating to violence against women such as the right to equality, the right to life, the right to liberty, the right to bodily security, the right to privacy, the right to freedom of movement, the right to be free from inhuman and degrading treatment have been protected in the ICCPR. Impliedly, thus, violence against women has been prohibited in the ICCPR. Hence states are under a duty to safeguard women against gender based violence. The obligations of states are threefold: the one is not to commit violence of any type either by itself or by its officials and employees and the second one is the duty to prohibit and punish gender based violence and three one is to ensure that victims of gender based violence are to be compensated for the injury they have suffered gender based violence either it be physical, psychological, sexual or economic damage.

The CEDAW has prohibited any discrimination committed against women having a negative impact upon the recognition, enjoyment or exercise of human rights of women. Since violence against women, by itself, is discrimination against women and

violation of the human right of women, implicitly, it has been prohibited under the CEDAW. In an express provision, specifically, the CEDAW has strictly prohibited women trafficking and the exploitation of the prostitution of women. Similarly, the African Protocol on the Rights of Women has pronounced that discrimination and violence against women are violations of numerous human rights of women. States parties to the African Protocol on the Rights of Women have promised to safeguard women against discrimination and violence against women. Both the international community and the African Union, in the above said international human rights instrument, have required states to avoid the existing discriminatory laws, customs, practices, traditions and attitudes and to establish gender sensitive policy and laws.

The UN Declaration on the Elimination of Violence against Women has expressly declared that violence against women is a violation of the human right and fundamental freedoms of women. True, violence against women is a violation of the right to life, the right to liberty, the right to security of person, the right to freedom of movement, the right to be free from inhuman, degrading treatment which is a clear violation of various provisions of the UN Charter, the UDHR, ICESCR, ICESCR, CEDAW and other major international human rights instruments. The DEVAW has declared that all cultural, traditional or religious practices of the concerned society cannot be used as a justification for the commission of violence against women in the jurisdiction of a state. The DEVAW and the African Protocol on the Rights of Women call for states to prohibit, investigate, prosecute and punish all forms of violence against women, particularly on domestic violence, sexual harassment, rape, marital rape, abduction, women trafficking , forced prostitution , harmful traditional practices such as female genital mutilation (FGM) and early marriage. States, in international legal regimes, have been required to provide for appropriate compensatory remedies for the redressal of the plight of the victims of woman. To this effect, national states have agreed to enact and implement gender sensitive laws and policies, and to avoid laws, traditions, cultural and customary practices that are prejudicial to the recognition as well as to the enjoyment of human rights of women.

In line with the international human rights instruments and in accordance with the African Protocol on the Rights of Women, the Constitution of Ethiopia has provided for the entitlement and the full enjoyment as well as the exercise of the fundamental human rights and freedoms of the human person. It recognizes the inviolability and inalienability of the fundamental rights and freedoms of any human person. The Constitution of Ethiopia has also provided for the protection of the right to life, the right to liberty, the right to security of person, the right to freedom of movement, the right to privacy, the rights to be free from inhuman, degrading treatment, the right to equality of men and women and the right to access to justice have been directly transplanted from the UN Charter, the UDHR, ICESCR, ICESCR, CEDAW and from the African Charter on Human and Peoples' Rights in the Constitution of Ethiopia. Further, the Constitution of Ethiopia has prohibited discrimination against women and has provided for the temporary provision of positive discrimination in favor of women. This implies that since violence against women is a violation of all the above set of fundamental rights and freedoms; it has been prohibited in the Constitution of Ethiopia. Hence, in accordance with the Constitution of Ethiopia, women are free from physical, psychological and sexual abuse or exploitation.

To widen the scope of the protection of human rights, Ethiopia has been a party , inter alia, to the Convention Prohibiting the Practice of Slavery , International Covenant on Economic, Social and Cultural Rights , Internal Convention on the Elimination of All Forms of Racial Discrimination , International Covenant on Civil and Political Rights , Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Convention Concerning Forced or Compulsory Labour, Abolition of Forced Labour Convention, Convention on the Elimination of Discrimination on Employment and Occupation , Convention concerning Occupational Safety and Health and the working Environment and African (Banjul) Charter on Human and Peoples Rights. All the said international human rights conventions and protocols have been constitutionally declared to be parts of the law of

the land. However, as there is an ambiguity in the provisions of the Constitution of Ethiopia, there is no common understanding, among academicians and practitioners, pertaining to the status of international human right laws vis-à-vis the FDRE Constitution and/or proclamations. In accordance with the finding of this research, however, the FDRE Constitution is the highest law of the land and it is neither associated with the ratified international human rights treaties nor with international customary human rights laws. Further, the author in his thesis has ascertained that both international human rights treaties duly adopted in Ethiopia and customary international human rights laws are on the same footing with a proclamation.

To suppress violence against women, in accordance with the international human rights laws and with the Constitution of Ethiopia, the Government of Ethiopia is, therefore, supposed to:

- Adopt gender sensitive policy which would define the term violence against women and which would sufficiently protect women against gender based violence.
- Enact gender sensitive criminal laws that provide for sufficient penalty against an abuser of violence against women
- Enact gender sensitive procedural laws that safeguard victims in the investigation, prosecution and trial of cases of violence against women
- Enact laws that provide for civil remedies for victims of violence against women, mainly, protection order, residence order and compensation for the redressal of the plights of victims of violence against women.

Here in below, therefore, the author in his thesis has summarized the issue whether the existing legislations of Ethiopia accord with international legal framework dealing with violence against women and with the FDRE Constitution. In another way of saying, the thesis has demonstrated that the legal framework of Ethiopia, as it stands now, does not sufficiently safeguard the human rights of women against violence against women.

To overcome violence against women, there is a need to adopt gender sensitive policy and to apply it accordingly on cases of violence against women. It is the policy that guides the lawmakers to enact gender sensitive laws. It is the policy that guides judges, public prosecutors, police and other relevant public officials to open their eyes towards violence against women. It also conveys the message that violence against women is unwanted practice in the society. When we see the policy consideration of violence against women, Ethiopia has adopted the National Policy of Ethiopian Women and the FDRE Criminal Justice Policy. However, in both policy documents of Ethiopia, there is only too little and indirect mention concerning on violence against women. Meaning, there is no detailed, well elaborated, specific and comprehensive policy document that deals with violence against women in Ethiopia. Both of the Policy documents are the most relevant official documents in which violence against women should have been defined. But, the term violence against women has been defined neither in the policy documents nor in any legislation of Ethiopia. Hence, it is hardly possible to define violence against women in reference with policy and legislative sources in Ethiopia, which makes difficult to differentiate random violence and gender based violence.

When we conclude the legal framework of Ethiopia that deals with the crime of rape, the word rape has been defined by giving special emphasis on male rape against women. Since the primary victims of rape are women, in this regard, the position of the anti rape law of Ethiopia is quite right. The definition of rape given in the rape law of Ethiopia, however, lacks clarity as to the degree of penetration of male sex organ into the female sex organ so as to constitute an offence of rape. In contrast, in the jurisdictions of the USA and India, the slightest penetration of male sex organ into the female sex organ suffices to constitute an offence of rape. In the rape laws of the USA and India, the crime of rape includes the penetration of the penis into the vagina or anus or oral cavity or the penetration of any other body parts of a woman with a penis or with an object. I call the later forms of rape as forced sodomy. That is, both a rapist and forceful sodomite are, invariably, punishable with the same criminal penalty. But, in Ethiopia, the offence of rape does not include forced sodomy or sexual attacks of other body parts of an abused woman. Even if forced sodomy is a criminal offence, in Ethiopia, the law has provided

more severe penalty against a rapist than the penalty imposed against forceful sodomite. The claimed reason is to prevent unwanted pregnancy which would be resulted in an offence of rape. But, the law seems to have overlooked the trauma that women face more in case of forced sodomy than in the case of rape. Moreover, the fact that forced sodomy and rape have been provided in different legal provisions, creates confusion to apply the relevant provision of the law in a given case of gang rape. Because, a member of a gang may commit penis vaginal penetration, the involvement of the other gang member may be penis anal penetration and the involvement of other one may be penis oral penetration. In this case, both the material and the legal elements of the crime committed by each member of a criminal group are not the same. Hence, it makes difficult the tasks of law enforcement organs to decide whether the offence is gang rape or not.

In the USA, the definition of rape includes marital rape. In India, except the victim woman is less than 15 years of age, rape does not include marital rape. In Ethiopia, marital rape is allowed clearly and unequivocally. The assumed reasons are the prevailing cultural belief and traditional practices of the society legitimize marital rape. However, 22 percent of women in Ethiopia were ascertained, in a research carried out recently, to have been suffered marital rape. As we have discussed in the international human rights laws and in FDRE Constitution, cultural and traditional practices cannot be used as justification for the violation of human rights. Hence, the legalizing of marital rape for the reason of culture and traditional practices is not legitimate.

In the rape laws of the USA, India and Ethiopia an offence of rape is presumed to be a general intent crime. However, there is a circumstance in which the wrongdoer may commit the offence of rape, believing that he has obtained the consent of the victim, in fact he did not. Hence, where the alleged sexual affair is said to have been committed in the absence of criminal intent towards the non consent of the victim, the rape laws of the USA and India have adopted the objective standard of mistaken defense in rape trials. In Ethiopia, by contrast, the law has adopted the subjective standard of mistaken defense, which is to be measured subjectively by the wrongdoer that the victim has consented to the act, whilst she did not. This creates an unreasonable defense for the accused to go unpunished from the alleged criminal offence.

Though rape is non consensual sexual intercourse, sometimes there is a dilemma to ascertain the consent of a woman towards the claimed sexual relation. In this case, in the jurisdictions of the USA and India, a victim is not required necessarily to use physical resistance to show her unwillingness or non consent to the claimed sexual offence. But, in Ethiopia, it is must for the victim woman to make physical resistance to show her refusal to the claimed sexual offence. It has been expressly provided that to vitiate the consent of the victim; the compulsion for the sexual act must be grave intimidation that must deny the physical resistance of the victim. Where a victim faces less intimidation that cannot deny the physical resistance of the victim, the sexual act is presumed to be consensual sexual intercourse. This has negative implications against the victim and the criminal justice system. It would result an unintended effect against the life, body and health of the victim. Further, it helps the offender to evade from criminal liability.

In the rape laws of the USA, India and Ethiopia, consent of a woman victim obtained under the influence of drug and /or intoxicant substance is legally presumed to be vitiated consent to the alleged sexual act. Hence, the offender is liable for the offence of rape he has committed against the victim. In all jurisdictions, however, the law does not safeguard the victim of the crime of rape where she personally drugging herself in the consumption of the alcohol, drug or other intoxicant substances.

To take precarious measures for the health, life of the pregnant women and the conceived child, the Indian Penal Code has established a separate legal provision that provides for severe penalty against the offence of rape committed upon a pregnant woman. In fact, in Ethiopia, the consideration of the health, life of the victim women in general has been taken into account in the determination of the sentence of an offender of the crime of rape. Unlike the jurisdiction of India, however, in the FDRE Criminal Code, there is no special legal provision that separately penalizes rape committed against a pregnant woman.

To recapitulate, the legal framework of Ethiopia, as it stands now, does not sufficiently address the crime of rape including marital rape.

The hypothesis which has hypothesized that the existing legal framework of Ethiopia, as it stands now, does not sufficiently address sexual harassment of women has been proved in this research work. In fact, sexual harassment is not uncommon in USA and India; which is also widespread in Ethiopia even worse than in the USA and India. To overcome sexual harassment, the USA and India have enacted adequate anti sexual harassment laws. In both jurisdictions, the term sexual harassment has been well defined and has been enshrined to include unwelcome sexual advance comprising of unwanted physical contact, unwelcome sexual advance such as ragging, touching or brushing of hairs, breasts, abdominal parts or any other body part of an abused woman as well as, molestation or displaying pornographic or other insulting pictures or says against her. In Ethiopia, by contrast, there is no law that sufficiently defines the term sexual harassment. In accordance with Article 624, 625 and 846 (b) of the Criminal Code of Ethiopia, we may understand that the term sexual harassment includes sexual assault and unwelcome sexual request. But, unwelcome sexual request is defined in nowhere in Ethiopian laws. Hence, it is difficult to identify which types of abusive behavior constitute sexual harassment.

In the jurisdictions of the USA and India, both quid pro quo sexual harassment and sexual harassment resulted from a hostile work environment have been prohibited. But, in Ethiopia quid pro quo sexual harassment has been prohibited, while hostile work environment sexual harassment has been partially prohibited, partially not prohibited. To illustrate, women employees in the private sector are legally unprotected from sexual harassment that comes from coworkers and women employees, both in the public sector and in the private sector are legally unprotected from sexual harassment that comes from a third party harasser.

As we have explored in the jurisdictions of the USA and India, it is not only advisable, but also an obligation for an employer to establish anti sexual harassment policy or anti sexual harassment committee that would safeguard women against quid pro quo sexual harassment and hostile work environment sexual harassment. On this issue, for private sector, the Labor Proclamation of Ethiopia has contemplated the establishment of the collective agreement which is to be decided by the joint agreement of the employer

and the representative of employees. But, the issues which have been enshrined to be decided in the collective agreement of a company are general working conditions, but not specific cases of workplace sexual harassment. Moreover, public institutions have been required to establish a disciplinary committee, but its mandate is not specific to cases of sexual harassment rather it has been contemplated to focus on general disciplinary issues and its composition, unlike the Indian scenario, has not been required to comprise male – female ratio. Hence, in Ethiopia, neither anti sexual harassment policy, nor anti sexual harassment committee has been legally required to be established in a company or in a government institution.

In the USA and India, during the investigation of cases of sexual harassment which would be claimed to be committed at work place, an employer has been legally required to take precautionary measures such as transfer of the workplace of either of the parties in dispute, grant leave to the victim, rearrangement of time and of the workplace or seats, and temporary removal of the suspect from the employment site. Whereas, in Ethiopia, except for temporary suspension of an employee, who commits disciplinary fault, from his job, there is no sufficient law that requires an employer to take the necessary interim precautionary measures against an abuser of workplace sexual harassment. Depending upon the circumstances of the case, in the jurisdiction of the USA, an employer is owed to compensate a woman victim for its failure to safeguard her against quid pro quo and /or hostile environment sexual harassment. In the jurisdiction of India, an employer is subject to punishment by fine extending to fifty thousand rupees where it fails to provide sufficient precautionary measures against an abuser of workplace sexual harassment. In Ethiopia, however, there is neither criminal liability nor civil liability against an employer, towards a woman victim, for its failure to safeguard her against quid pro quo and /or hostile environment sexual harassment.

In a nutshell, the existing legal framework of Ethiopia does not sufficiently address the term sexual harassment of women committed at the workplace.

The hypothesis which has hypothesized that Ethiopia has not adopted comprehensive and adequate gender sensitive criminal law dealing with domestic violence has been proved in this research work. Women in the domestic setting suffer

from physical, psychological, sexual and economic violence committed by their husbands, former husbands, partners, former partners or by any other person having marital relation with the abused woman. In cases of domestic violence, the primary victims are women and children. It is in this respect, the Constitution of Ethiopia provides for the special protection of women and children in the family life. However, there is a gap in the existing statutory legislation concerning on domestic violence. Unlike the jurisdiction of the USA and India, in Ethiopia, there is no law that deals sufficiently with domestic violence. Domestic violence, invariably with community violence, has been provided in reference to violence committed between a wife and husband and persons related to an irregular union. Domestic violence has been defined nowhere in Ethiopian laws. Hence, it is hardly possible to differentiate random violence with domestic violence, community violence with domestic violence. It is also difficult to identify which abusive behaviors constitute domestic violence. Meaning, there is no clue to know whether the law covers physical, psychological, sexual and economic violence often committed in the domestic setting. There is no mention, either explicitly or implicitly, about marital sexual abuse. Hence, women, in Ethiopia, are hardly protected against marital sexual abuse. Further, it is also difficult to know the persons who are legally protected against domestic violence.

In sum, the legal framework of Ethiopia, as it stands now, does not sufficiently address domestic violence.

Prostitution is common in Ethiopia especially in metropolitan cities. It is not a rational choice for women to engage in commercial sex work, but poverty pushed them into such abusive situation. In fact, it is easy for them to make money within a short period of time; but, obviously, it has unavoidable negative consequences on the physical, psychological, sexual integrity and dignity of an abused woman. It is in this respect, the international community requires states to criminalize, prosecute and punish a person who exploits the prostitution of another or who prepares or attempts to commit such offence or who participates in the exploitation of prostitution of any other person irrespective of the consent of the victim. Accordingly, even if the term prostitution has not been defined in Ethiopia, exploitation of prostitution of another person and soliciting

of prostitution has been prohibited; but, voluntary prostitution is legal unless it is carried out in an area that disturbs the residents of the locality.

In fact, I am not of the view that voluntary prostitution should be prohibited. However, to repair the long term psychological injury to the victim and to exit her from the abusive situation, it is essential to provide for sufficient rehabilitative or an assistance mechanism for an abused woman. In the international human rights laws, as has been discussed in Chapter III of this thesis, states have been required to provide for rehabilitation and social adjustment mechanisms for victims of prostitution in the educational, health, social, economic sector. This mechanism has been well adopted in the Immoral Traffic (Prevention) Act, of 195 of India. In Ethiopia, by contrast, there is no law that provides for the rehabilitation mechanisms for victims of commercial sex workers. Unlike the jurisdiction of India, there is no law that provides for the winding up of a brothel or a premise in which prostitution is carried out and the removal of a prostitute from such abusive situation.

The hypothesis which has hypothesized that the existing legal framework of Ethiopia, does not sufficiently address women trafficking has been disproved in this research work. The reason , as has been discussed in Chapter I of this thesis, is human trafficking is a very serious problem in Ethiopia in which about 96.4 per cent of the victims of the crime are women and that they suffer from forced prostitution, domestic servitude, and forced labour. Hence, to overcome this serious social problem, very recently on 17th August 2015, one year after the beginning of this thesis, Ethiopia has enacted a new law dealing with human trafficking, specifically trafficking of women and children.

In the existing law of Ethiopia, human or woman trafficking is defined as the process of dragging of a person into abusive environment or moving the victim into a situation of exploitation by using coercive means and /or the vulnerability of the victim. The process element of the crime of human trafficking, specifically trafficking of women and children includes recruitment, transport, transfer, harbouring or receiving of a person, while, the means element comprises of the use of threat or force, coercion, abduction, fraud, deception, abuse of power or using the vulnerability of the victim. The purpose

element of the said crime is the exploitation of a person comprising of slavery, servitude, bonded labour, forced sexual and nonsexual labour as well as the removal of human organs. There seems an overlap between women trafficking vice – a -vice slavery, servitude, bonded labour or forced sexual and nonsexual labour as well as the removal of human organs. Meaning, the purpose and the process elements of human trafficking seems to overlap one another. But, human or woman trafficking, by itself, has not been contemplated to be slavery, forced labour or forced sexual service, rather it is the movement or recruitment of a person for exploitation. Where the process of woman trafficking is exploitative, however, the process of women trafficking seems to overlap with the purpose human trafficking. If not, they are not the same offence.

In the Palermo Protocol and in the jurisdictions of the USA and India, consent of the victim of women trafficking cannot serve as a defense for the wrong doer so long as the process of trafficking is committed using either of the above coercive or malicious acts. The same approach is approximately adopted in Ethiopia. In accordance with the new law of Ethiopia, dealing with human trafficking, where the act of recruitment, transporting, transferring, harbouring or receiving of a victim is done using threat, coercion, other form of coercion, abduction, fraud, deception, abuse of power or by using the vulnerability of the victim, consent of the victim does not nullify the criminal nature of human trafficking. It is logical that the occurrence of either of the above coercive or malicious acts prevents the capacity or the power of the victim to give valid consent. For whatever reason, however, where the victim of trafficking is less than 18 years of age by no means the abuser can justify his act in accordance with the consent of the victim. The reason is that a child cannot make rational choice or cannot give valid consent.

To discourage women trafficking, the law has provided a grave penalty against a person who is found guilty to have committed human trafficking, including the confiscation of the assets or the money obtained or the proceeds of the crime of human or women trafficking and the winding up of the operation of the business of human or women trafficking. Depending upon the profile of the trafficker, exploitative nature of process of women trafficking and the vulnerability of trafficked woman, the penalty provided for women trafficking has been so grave, which ranges from 15 years to 25

years rigorous imprisonment and fine up to 2,500,000 Birr. Any person who assists the principal offender at any stage of the process of women trafficking is subject to penalties ranging from 15 years to 25 years rigorous imprisonment and with fine from 150,000 to 300,000 Birr. Moreover, failure to give the required information to the relevant public authority is punishable. In practical cases, however, courts of law are reluctant to pass effective punishment against the author of the act.

The law has also established an effective preventive mechanism against human or women trafficking. To substantiate, any employment agency which has been licensed to deploy Ethiopian employees in a foreign country has been required, through its sub agency, to protect the rights, safety and dignity of the employees against maltreatment which would be committed in abroad. For this purpose, it has been required to have sub agency in a country in which it sends the employees and to deposit a sufficient amount of money in a bank account to ensure the security of the employees in abroad. Further, the law has also established sufficient identification, rehabilitation, repatriation and compensation mechanisms for victims of human trafficking. The said law has also established rehabilitative and compensatory mechanisms for victims of women trafficking, which is the same as has been provided in the UN 2000 Human trafficking Protocol and in the Victims of Trafficking and Violence Protection Act of 2000 of the USA.

It is, therefore, fairly easy to say that Ethiopia has adopted specific and comprehensive law sufficiently addressing women trafficking.

The hypothesis which has hypothesized that Ethiopia has not adopted comprehensive and adequate gender sensitive criminal procedural law dealing with reporting, investigation, prosecution and trial of cases of violence against women has been proved in this research work. As the finding of this thesis has demonstrated, there are legislative gaps in reporting, arresting, investigation, prosecution and trial of cases of violence against women in Ethiopia. This finding has been summarized in the following paragraphs.

In accordance with the DEVAW, the African Protocol on the Rights of Women and in the Constitution of Ethiopia, it is a mandatory obligation for the Government of Ethiopia to establish gender sensitive criminal procedural laws that safeguard victims in the investigation, prosecution and trial of cases of violence against women. Meaning, with no prejudicial effect on the rights of the accused to the due process of law, the criminal procedural laws of Ethiopia should be victim friendly that safeguards victims of women against re-victimization and to safeguard their dignity in all process of their case. In each process of cases of violence against women, at most possible, the law should balance the interest of an accused person and of the victim. We have concluded that for the efficacious application of criminal procedural laws, every member of the society is supposed to report the commission or the likelihood of the commission of criminal case to the relevant public authority. Further, because of the existing social, economic and cultural reasons, victims of violence against women hardly report their cases to the police or to the public prosecutor. Hence, it is just to allow a person, other than the victim, to report the commission or the likelihood of the commission of case of violence against women to the police or to the public prosecutor. That is the reason, in India; every person is allowed to report cases of domestic violence to the Protection Officer. In the USA, an abused woman in the domestic setting, through the national domestic violence hotline, can safely report their case to the police.

In Ethiopia, for cases of women trafficking, it is not only a right but also a duty of citizens and inhabitants to report the commission or the likelihood of the commission of the case to the police or to the public prosecutor. It is a right for any person to report the commission or the likelihood of the commission of cases of rape, abduction, exploitation of prostitution of others and grave cases of sexual harassment to the police or to the public prosecutor. However, there is neither a duty nor a right to report the commission or the likelihood of the commission of cases of domestic violence to the police or to the public prosecutor. It is possible only where the case is so grave that endangers the life and the physical integrity of a woman victim. The claimed reason is that domestic violence is a private issue that does not negatively impact upon the public peace and order and that the interference of the public within the private life of an offender and the victim is unreasonable. But, indeed, domestic violence is not a mere private issue rather it

is a public domain that needs the assistance of each member of a society at least by reporting the case to the police. In a nutshell, the existing legal framework of Ethiopia does not sufficiently address reporting of incidences of domestic violence to the relevant public authority.

The fact that arrest warrant issued by a court of law would prevent police arbitrary arrest is true, but it should not be a legal option for cases of violence against women. The reason is fairly clear that the issuance of a warrant of arrest takes a long time, money and energy and then it is not easily accessible for a woman victim especially for victims of domestic violence. In the process of the issuance of a warrant of arrest, a woman victim would be susceptible to re-victimization especially of domestic violence. To avoid this risk, in the USA, a police can arrest a person who is suspected to have committed or to commit an offence of domestic violence with no arrest warrant. In India, warrantless arrest is applicable against any person who is suspected to have committed or to commit an offence of domestic violence, rape and sexual harassment. In Ethiopia, warrantless arrest is validly applicable in cases of rape, woman trafficking and serious cases of sexual harassment. Regarding to domestic violence, however, unless the case is so grave that endangers the life and the physical integrity of the woman victim, warrantless arrest is not allowed. But, for various reasons, victims of domestic violence face re-victimization until the issuance of arrest warrant. Hence, in Ethiopia too, it is just to adopt warrantless arrest against an abuser of domestic violence.

It is an open secret that unless there is gender-insensitive procedural law, it is so difficult to safeguard the dignity or the privacy of the victim in the process of investigation of cases of violence against women. It is in this respect, the UN Anti Human Trafficking Protocol says that the investigation, prosecution and trial of cases of human trafficking must not be disclosed to the public. To safeguard victims of violence against re-victimization, in India, the investigation process of an offence of sexual assault has been required to be guided by the court and must be carried out at a safe place for the victim. Further, the investigation process of an offence of sexual assault shall not be carried out in public, save the otherwise decision of the court where it deems that a public investigation of the case does not negatively impact upon the dignity of the

victim. In Ethiopia, by contrast, there is no law that requires the investigation process of cases of violence against women to be held in camera. Recently, intending to make the proceeding of cases of violence against women to be gender sensitive, the FDRE Ministry of Justice has issued a guideline entitled Guidelines for Investigation, Prosecution and Litigation of cases of Violence against Women and Children. In the said guideline, the place in which investigation of cases of violence against women is carried out has been supposed to be safe and appropriate for the victim; the investigating police officer has also been required to be victim friendly and free of gender bias. Further, in the time of the examination of witnesses or victims of violence against women, the investigating police officer is supposed to safeguard the privacy, dignity and autonomy of the victim against the prejudice of the offender and his families. The drawback of the said guideline, however, it has not enabling parent legislation nor has been published in the official gazette. By itself neither is a law, nor is backed by a law, hence; it is, at least, soft law, at most, non law. The problem, therefore, will continue unabated since the nation will enact hard law.

As has been stated herein above, to safeguard victims against secondary victimization, the prosecution of cases of violence against women must be victim friendly. In Ethiopia, however, except, the existence of the above cited guideline, there are no sufficient gender-insensitive criminal procedural laws that would protect the privacy, dignity and autonomy of the victim against women.

Despite judges are supposed to be at most impartial in their judicial service, in the existing Criminal Procedure Code of Ethiopia, victims of violence against women are highly susceptible to secondary victimization during the trial of their case before courts of law. Inter alia because, there is no law that requires courts of law to ensure that a question of a party at a trial, be examination in chief or cross-examination or leading question imposed against a witness or a victim of violence is to be selective and victim friendly. Hence a victim witness in the trial of cases of violence against a woman is required to answer any question asked by a lawyer of the defendant, by the public prosecutor and even by the trial court. Moreover, except, in case of women trafficking,

there is no clear procedural law that requires trial of cases of violence is to be held in camera. Hence, the public nature of the trial and the open ended questions forwarded to the victim during the trial of cases of violence against women inevitably creates mental anguish, humiliation and anxiety against the victim witness.

To establish the criminal guilt of a person who is accused to have committed cases of violence against women, it is essential to have a gender sensitive law that takes into account the vulnerability of a woman victim in the production of evidence before courts of law. For cultural, social and economic reasons, a woman victim often faces challenges to testify each and every element of the commission of the crime either at the time of police investigation or before courts of law. To solve this problem, in India, some basic elements of an offence of rape, dowry death, demanding of dowry and forced prostitution have been required to be proved by the prosecution, while, for other specific and detail elements of the said offences, the burden of proof shifts to the accused to establish his blamelessness towards the alleged crime. In Ethiopia, by contrast, except in case of women trafficking, the burden of proof lies on the shoulder of the prosecution to prove each and every element of violence against women. Hence it is a challenge for an abused woman to testify each and every abusive, shocking and shameful elements of the crime of rape and domestic violence. Further, the legal requirement of the standard of proof, to establish the criminal guilt of an abuser, is highly subject to judicial discretion. Even if judges are said to be impartial, they are the result of the prevailing socio-cultural attitude towards violence against women. Hence, they would not be free from gender bias so that it is inevitable to favor on the side of the male abuser.

The finding of this thesis has proved that the rules of civil remedies: protection order, residence order and compensation mechanisms, adopted in Ethiopia, are not adequate enough to protect and to redress victims of violence against women. This finding has been summarized in the following paragraphs.

As has been discussed in Chapters II , IV and V of this thesis , in the USA and Spain, victims of gender based violence have been legally entitled to get a protection order against their abusers and in India and South Africa, protection order is available for a woman who is subject to domestic violence. In all jurisdictions, a protection order is

available at any stage of the legal proceeding before a civil court or a criminal court. In Ethiopia, by contrast, a protection order is hardly available for victims of an offence in general. Before the final proceeding of the criminal cases, save for the prohibition of the possession of firearms in limited circumstances, courts of law are not allowed to issue protection order. At the time of or after the conviction of the accused, courts of law in narrow circumstances may issue a protection order against the abuser. In essence, thus, protection order has been regarded as secondary penalty which is available only after the conviction of the offender in the criminal case. In all the above said foreign jurisdictions, protection order can be sought in lieu of or in addition to other legal remedies available to the victim. In contrast, civil protection order is applicable only in lieu of other legal remedies available for the victim in accordance with tort law of Ethiopia. Simply put, in Ethiopia, if there is no criminal case alleged against the abuser or tort action against such abuser, there is no protection order available for victims of violence against woman. Moreover, in Ethiopia, the issuance of a protection order is not a mandatory requirement for a court of law. Hence the issuance of a protection order, it suffers for judicial discretion.

In India, it is only male party to a conflict in the domestic setting shall be evicted out from the common house of the family. By contrast, Ethiopia has not established law dealing with residence orders. Hence, in cases of an incidence of domestic violence, who shall be evicted out from the common house of the family is unclear. It is, therefore, possible to say that residence order is hardly available for victims of domestic violence in Ethiopia. In effect, absence of residence order means to leave the victim of domestic violence in dilemma either to stay at home and face re-victimization of domestic violence or to opt to be out of the home and to suffer from community violence. To protect the victim against the two evils, it must have rules of residence order.

The search for restorative justice for victims of violence against women is an outstanding duty of the international community. It is in this respect, the UN Anti Human Trafficking Protocol calls for national states to provide for a sufficient compensation mechanism for victim of women trafficking. The UN Resolution on Elimination of Domestic Violence against Women also recommends states to redress the plight of

victims of violence against women by providing for effective remedies including compensation, indemnification and healing of victims. In the same way, in the USA and Indian scenarios, victims of violence against women can safely be compensated either in the criminal or civil proceedings or from the victim compensation fund, established by the respective states for the realization of compensating victims of a crime or victims of violence against women.

In Ethiopia, by contrast, both the criminal and the tort law, dealing with the entitlement as well as the assessment of damages to be awarded to victims of violence against women are insufficient, full of encumbrance and uncertain. Hence, the existing legislative framework is insufficient to provide for a sufficient compensation mechanism for victims of violence against women. To substantiate, the amount of compensation to be paid for moral damage shall not be more than 1000 Ethiopian Birr. The implication is that moral damage of victims of violence against women is left to be uncompensated in Ethiopia. Even for compensation of physical or material damage, the only available remedy is the pocket of the author of the damage. But, the author of the damage may be a man of an empty pocket or he may evade from the enforcement of the law or he may be out of the jurisdiction of the state or the offence may be committed by an unidentified person. In all these circumstances, victims of violence against women are left to be uncompensated. Recently, Ethiopia has established a public compensation fund for the redressal of the plights of victims of violence. But its scope of application is limited only for victims of cases of human or women trafficking.

It is quite clear that the policy and the legal framework of Ethiopia, as it stands now, do not sufficiently address violence against women, except for offence of women trafficking. In order to have sufficient and comprehensive laws on the subject, therefore, I would like to present the following suggestions.

Suggestions

1. It should be construed that both customary international human right laws and ratified international human rights treaties have been made part of the law of the land and their status in the domestic legal system of Ethiopia is

the same as the status of parliamentary legislations. As the main purpose of adopting international human rights laws in Ethiopia is to advance the efficacious protection of human rights, hence, in case of conflict between ratified international human rights treaties and proclamations, the interpretation of the two bodies of laws should favor for the best protection of human rights in Ethiopia.

2. The Government of Ethiopia should adopt gender sensitive policy that directly and sufficiently addresses violence against women. The policy, therefore, should provide for a sufficient definition for the term violence against women that would enable the law enforcement organs to differentiate between gender based violence and random violence.
3. The definition of rape provided in the existing Criminal Code of Ethiopia should be amended in such a way that marital rape, coercive oral penetration or anal penetration or penetration of other body parts of a woman either by a penis or by an object should be included under the purview of the rape law of Ethiopia.
4. It is high time for Ethiopia to enact gender sensitive laws applicable in cases of sexual harassment. The law should, therefore, define the term sexual harassment and prohibit both quid pro quo and hostile work environment sexual harassment. The law should require an employer to establish anti sexual harassment policy and complaint procedures and to take other precautionary measures against workplace sexual harassment.
5. It needs for Ethiopia to enact specific and comprehensive laws that deal with domestic violence which should define the term domestic violence. The law should also make clearer to those persons who shall be protected under law. Further, the law should define and punish acts of physical violence, psychological violence, sexual violence as well as economic abuse committed within the domestic setting.

6. There should be a law that defines the term prostitution and the law should make clearer the safeguarding and the rehabilitation mechanisms of victims of prostitution. Specifically, the law should provide for the winding up of a brothel or a premise in which prostitution is carried out and the exit of a prostitute from such abusive situation.
7. The lawmakers should amend the existing criminal procedural laws and enact gender sensitive criminal procedural law that should safeguard victims of gender based violence against re-victimization in the process of reporting, investigation, prosecution and trial of cases of violence against women.
8. It is also suggested that the lawmakers should amend the existing law and then should provide for the availability of protection order and residence order for victims of violence against women particularly for victims of domestic violence in Ethiopia.
9. The author of this research also suggests that the lawmakers should make suitable amendments in the existing compensation law of Ethiopia. The amended law, therefore, should provide for the reasonable and fair amount of compensation mechanism for the redressal of victims of violence against women. Any grievance arisen by the parties against any decision of the court on the assessment of compensation to be awarded to the victims of violence against women should also be made appealable to the higher court.
10. Where a tortfeasor fails to compensate a victim of violence against women, the plights of a woman victim should not be left uncompensated. The Government Ethiopian should, therefore, establish public compensation funds to compensate victims of violence against women where the author of the damage fails to compensate the victim.

“1 Look, guys, no matter what a girl does, no matter how she dressed, no matter how much she’s had to drink, it’s never, never, never, never, never OK to touch her without her consent. This doesn’t make you a man. It makes you a coward.”

VP Joe Biden

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