

A study about the biopsychosocial factors which affects the ability of discernment power against sexual offences

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In this study, it was reported that the sodomia victims generally had been found within 5-15 years age, psychosocial low status and male. These cases frequently had not able to discernment power of the meaning and consequences of the offences committed by them and moral discernment of the being violated. Because victims may have minority, mental retardation, or psychological disorders. It can be accepted that starting of minority in rape resistance determined with pubertas or 12 years old. [Turk J Med Res 1993; 11 (5): 243-246]

Key Words: Discernment power, Rape

This study aims to represent the concept "The ability of discernment against sexual attack and the factors which falls down this phenomen by using the expert reports of Ankara University Medical Faculty Department of Forensic Medicine.

In Turkish Penal Code which clauses numbered as 414 and 416 describe the factors which affect this phenomen. But in practise only minority is generally attributed as the main factors. For that reason this study is planned and the other factors which affect the ability of discernment power of the meaning and consequences of the offences committed and moral discernment of the evil act of the violation are being determined.

This concept has deal with sexual act which has related to rape and carnal abuse. All the actions performed with sexual desire is named as "Sexual act" (1). The sexual acts that have deviation from the sexual perversion whether rape or carnal abuse, are restricted by the laws. Forexample; homosexual actions could be considered as a rape if they were made with violation or putative actions.

Explaining these short knowledge about sexual act, in the following we have explained concept of rape. Rape is explained with different ways in many penal codes. In the eighth section of Turkish Penal Code; rape is described as the offence directed to dis-

turb the ethics of society and moral status of the family. As in other penal codes the complete definition of rape is unclear (2). Gök (3), has stated that; in rape cases a female and male must be the partners and moreover he has suggested that homosexual intercourse was not considered as rape. Homosexual act by use of physical power has been deal with carnal abuse like coitus buccalis. But this act has been accepted as rape in Appeal Opinion. Because of the feeling of lust with forcibly, closeness of anus to periné and desirness of decreasing number of delinquencies (3). For this reason, the sexual intercourse between two male will be a rape, if it is made with putative or forcibly actions. And for the act of rape; penis must completely penetrate to vagina or anus.

According to the above explanations the homosexual intercourse experienced by male is considered as rape where as actions experienced by female with clitoris which penetrates in vagina or anus with voluptuous emotions are not and moreover the sexual intercourse with a corpe is not considered as rape as well.

Carnal abuse can be defined as falling short of actual penetration with violance and voluptuous emolions. These actions deal with the against act of chastity and virtue.

Explaining of rape and carnal abuse, we are dealing with discernment power. In the following sentences. If sexual act made against a person with minority, psychological disorder and physical disability or effected from other factors of offender acts or of offender's deceitful transaction, according to Turkish Penal Code article 414.2 and 416 punishment were angmented.

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There aren't any discussion about incapability of discerning the meaning with concerning of psychiatric disorders and physical disability or factors of offender acts not only doctrines but opinions of court as well. There aren't any decision of the General Board of the Supreme Court of Appeals on these concepts. When the other factors of the offenders are thought the concepts was included minority. Not only in the Supreme Court of Appeal but also published after 1936 in Turkish Penal Code minority is accepted with different ages. Consequently finally in 1954 it was a decision of the General Board the supreme Court of Appeals made for the purpose of reconciliation of contradiction opinions on the minority expressed in the decisions of various panels (4). According to this decision, discernment power in child is not only related to minority but also determined with expert reports on biopsychosocial factors about it. Although it is as supposed that discernment power in children of the meaning and consequences of the offences committed by them and moral discernment of the evil act of being violated is related with minority. In the court the judge usually is looking for whether the victim has a psychiatric disorder, physical disability and minority but others one unusually determined by experts. So this study is directed to find the reason that cause the discernments.

MATERIALS AND METHODS

In this study, 462 people who attended in between 1968-1990 were sampled from Ankara University Medical Faculty Department of Forensic Medicine. They were all raped or carnal abuse and the discernment power and moral discernment of the acts were asked to be determined by court. Their dosiers were all examined dealing with the age, sex, educational status, occupation, nationality, way of rape (as vaginal or anal) and family stories. These datas were all validated by the help of SPSS (scientific pocket for social science) and χ^2 test were used for statistical analysis.

The abrevitions are as follows.

D (-): The victim didn't have capacity to discernment power of the meaning and consequences of the offences committed by his or her and also with the moral discernment of the evil act of being violated. So he couldn't resist to the actions.

D +: The victim has resisted to the action. Because he or she has capacity to discernment power of the mos.r->n and consequences of the offences committed by his or her and also with the moral discernment of the evil act to being violated. In these cases, the victim didn't have any psychological and physical disorder that prevent discernment.

D±: He or she could partially discern to the action.

D?: It was too late to decide, so it was unclear whether the victim could resist to the action or not.

U: Unknown. T: Total number of the subjects. Female. M: Male. Knowledge: At the time of action the victim was whether able to understand the result of that attempt. Low educational status and lack of knowledge about the sexual intercourse may lead to

the reduction in the discernment. It is also included to minority in this group.

Psychological: At the time of action the victim who has psychological maturity was whether able to understand the result of that attempt.

Social: It is also one of the parameters for minority. The victim might be persuaded, to believe rumour or suggested to play or answered his or her physiological need or convinced to offender's speech. So he or she didn't resist.

Men. R: Mental retardation

Reality testing: At the time of action the victim who has reality disorder from psychological disease was whether able to understand the result of that attempt.

Physical disorder: At the time of action the victim who has paralysis, fondness was whether able to understand the result of that attempt.

RESULTS

It's suggested that the case of the 327 facts (70.08%) were anal and the rest were vaginal (29.02%). 281 of the facts had a low education status (60.82%), 293 of them didn't have recorded their occupation, 302 of them were were living in Anatolia, 203 of then had 3-6 brothers and have problems in their family life (divorced, parents death, father's alcohol abuse and battered child).

DISCUSSION

Table 1 indicated that; 462 events were investigated in Ankara University Medicine Faculty of Forensic Medicine Department during 1968-1990. However the type of sexual action was not recorded (rape or carnal abuse).

It was reported that; 333 of the events were not able to discernment power of the meaning and consequently of the sexual offenders committed by them and also with the moral discernment of the evil act of being violated. According to these data, 186 (40.26%) of the victims were in minority, 120 (25.97%) of them had psychiatric disorders and 27 of them had physical disorders. The mentioned reasons were compared in the basis of discernment power and moral discernment with biopsychosocial status and the difference was statistically significant ($p > 0.05$ $\chi^2 = 0.87$ SD:2). But 119 of the events were able to discernment power in people of the meaning and consequently of the offences committed by them and also with the moral discernment of the evil act of being violated.

The effect of age in discernment power and moral discernment of sexual acts was studied and the knowledge, psychological maturity and social factors were compared but the difference was insignificant ($p < 0.05$, $X = 5.95$, SD:2). However it was accepted that minority, psychological immaturity and the social factors, all effect the indiscernment power and immoral discernment of sexual acts. This is considered as the first important factors that effect the indiscernment.

Table 1. The biopsychosocial status of the victims

	Minority			Psychological disorder		Physical disorder	T	%
	Knowledge	Psychological	Social	Men. R.	Reality testing			
D—	62	47	77	80	40	27	333	72.08
D+	32	14	18	16	26	13	119	25.76
D±	0	0	1	0	0	0	1	0.22
D?	0	2	0	1	5	1	9	1.95
T	94	63	96	97	71	41	462	
%	20.35	13.64	20.78	21.00	15.37	8.87	100.01	100.01
p>0.05 X ² =5.95 SD:2				p<0.05 X ² =10.52 SD:1				

p>0.05, X²=0.87 SD:2

Table 2. The age and sex of the victims (age is accepted with years)

AGE	0-4		5-11		12-14		15-19		20-24		25-29		30-34		35+		U.	T		
	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M				
D—	0	13	23	14	10	11	3	1	84		0	0	0	5	8	8	101	124	153	18
D+	0	0	4	19	12	12	19	26	1	1	4	0	0	0	7	2	48		51	68
D±	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0		0	1
D?	0	0	0	0	1	0	1	1	0	0	0	0	0	1	4	0	0		1	36
T	0	13	27	33	23	23	23	28	95		4	1	9	15	10	10	105	133	208	25
%	2.81		12.99		9.96		11.04		3.03		1.08		2.16	5.41		51.51		99.99		

p<0.05 X²=43.21 SD:2 (The age were grouped as 0-11,12-14; 15-19)

When mental retardation and reality testing is compared in the basis of discernments; a statistically significant difference was observed (p<0.05; X²=10.52 SD:1). In other words mental retardation was the second factor that effect the discernment. The physical disorder was the least important factor that effect the discernment (p>0.05; X²=0.52 SD:2).

The ages were grouped as 0-11, 12-14, 15-19 and when these groups were compared significant differences exist (p<0.05; X²=43,21 SD:2). According to these datas in Table 2, 45 (9.74%) victims were able to discernment and their-age range were 15-19. However 4 of the victims in this age group had mental retardation and could not discern of this act. 24 subjects (5.19%) from the 12-14 age and 23 subjects (4.98%) from the 5-11 age were also able to discern of this act. However 50(10.82%) of the victims in 0-11 age group were not able to discern against this act. 23 members of the 5-11 age group were an interesting finding which indicated that the child could resist against the sexual action and experts could be influenced in suggestion with decisions of the Supreme court of Appeals.

In the 15-19 age group the indiscernment in the resistance was due to the mental retardation and disturbance in the reality testing. When the number of the subjects older than 15-19 age group who could resist and could not resist were compared, the difference was insignificant (p>0.05; X²=0.00, SD:1). Since the purpose of this study was to prove the effect of age on the discernment againts sexual act, the age and other parameters were not statistically compared.

The way of rape was anal in 70.80% while 29.20% vaginal. This result indicated that most of the

rape were in homosexual character (5). Most of the victims were male (54.98%). Moreover the perperators were either the neighbours or close relatives of the victims (6). Most of the facts had low educational status (60.82%), didn't have an occupation (63.41%) and living in the Middle Anatolia (65.38%). These findings were competable with the literature (1,5,6).

Most of the victims (44.16%) had 3-6 brothers, death of family members, alcoholic adduct fathers, divorced families and battered child. It was also recorded that most of the families had socioeconomic loss, wanted to change their adress. Also they refused to go to psychiatry services due to socioeconomic problems and bachcheating.

We're have explained capability of discernment power of the meaning and concequencies of the offences committed and moral discernment of the evil act of being violated. Because some doctors and judges generally don't investigate with another factors of offender acts except minority and offender's deceitful transaction.

In laws, it the victim is not perminantly or temporarily resist the actions of offender's supply and demand, this situation is called as the inducement power and immoral discernment of sexual offences (7). While validating the facts of compulsion or intimidation the action of the victim, offender's purpose and acts must be considered as force or threating factors (8).

From the Forensic Medical point of view, the factors which effect the victim's discernment power and moral discernment of the evil act of being violated can be predicted as;

1. Psychological and physical disorders: In the physical force must be disappeared as in the paralysis state. The patients with psychological disorder will not be able to understand the effects of the rape or the evil acts were induced pathologically. All of these properties indicate the disturbed ego functions. Victims have cognitive disorders.

2. Reason rather than offender acts: The victims may be influenced from alcohol or narcotics, unconscious minority is accepted to include this subject by opinion of the Supreme Court of Appeals.

However there is not a clear clause in our laws related to minority the above mentioned parameters depend on the judge and expert's command. There were so many conflicting results in the opinion of the Supreme Court of Appeals (9). In 27.10.1954, 1954/20 number decision of the General Board of the Supreme Court of Appeals made for the purpose of reconciliation of contradiction options on the same question expressed in the decisions of various panels was determined to this subject. The facts which effect the resistance couldn't be gathered independently. These are not the matter of aggravation with cumulation. They won't change the punishment, altogether. The principle is that "Was the victim able to resist or not? and the victim were not able to resist againsts the crime act due to one of the discussed parameters". It would underline that the action was directed on purpose. So the judge will decide with a matter of aggravation according to this point. Tunah and Goksel (10) has stated that the perpetrator will imprisoned for 10 years if the victim was mental retarded or in minority according to Turkish Penal Code Article 414/2. But, if victim's biological and intellectual age was 9 years old, he would get 5 years, according to Turkish Penal Code Article 414/1. We accept these concepts. Moreover as in application; a short interview with the victim would make harder to decide the differences from the exact age and intellectual age.

It was previously mentioned that resistance against the rape would start with the 7th year of the life (11); resistance would depend on experience, biological development, knowledge, education, teaching of deceitful transaction about moral discernment of the evil act of being violated (3,11,12). However non of these factors deal with the emotional development status of the child. Whether the child is 7 years old or 11 years old, be could easily be frightened, to be influenced, intimidated. This event was named as "moral duress". The victim may able to know the results of the action but it will not help to resist and makes the victim to be horrified. So it would be better to accept the principle appropriate to Juvenile delinquency of Juvenile Court or the puberte age as the starting age for the resistance. A research which was held in 1983 support our idea starting that 11-12 years old child could hardly resist to the rape (13). Moreover Italian Penal Code has contained a matter of aggravation in punishment which is minority before 12 years old (14). However our penal code didn't contain this moral duress.

3. The frauds used by the perpetrator: Making the victim drunk, giving narcotics or sleeping pill are included under this title (15).

Although the experienced people in panel¹ code indicated that resistance was not related with the age. But our finding conflicts and indicates that age is the most important parameter in resistance. This problem is still discussed by the authors and can be rised due to the Italian Panel Code since the mentioned clauses are originated from Italian Clauses minority before 12 years old which is moral duress has not cited in our clauses. Since a child in 12 years old is expected to resist againsts the rape (14). We believe that the best age is about minority is 12 years old or the starting period of puberty in which an objective validation can be performed by the judge.

Irza geçme fiiline mukavemet üzerine etkili biopsikososyal faktörler hakkında bir araştırma

Bu araştırmada 5-15 yaş grubu, psikososyal düzeyi düşük, daha çok erkek çocukların fiili livatayoluyla ırzına geçildiği rapor edilmiştir. Bu vakaların sıklıkla yaş küçüklüğü, zeka geriliği, akıl hastalığı sebebiyle irza geçme fiiline mukavemete muktedir olmadıkları tespit edilmiştir. Irza geçmeye mukavemette yaş küçüklüğünün başlangıcı puberte veya 12 yaş olarak değerlendirilebileceği kabul edilebilir. [Turk J Med Res 1993; 11(5):243-246]

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