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A study on the differences in legal practices in child abuse cases with examples from different countries

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Abstract

Sex crimes against children is a global problem. The rate of such crimes are significant even societies with high levels of education and income. This study aimed to address necessary measures to minimize this problem by discussing the data and laws regarding sex crimes against children in five countries. The study reviewed scientific data on sex crimes against children in India, Canada, the Netherlands, UK and Turkey and the relevant penal codes in these countries, and compared the respective articles and practices. India is one of the countries with the highest number of child sexual abuse cases. The most interesting aspect of the Canadian law is that the law mentions peer relationships. It is noted that the criminal justice system in the Netherlands is, as opposed to many other countries, based on principles of rehabilitation and resocialization. The longer penalty times are striking in UK Sexual Offences Act 2003. The data from Turkish Statistical Institute shows that the number of sexual abuse cases are extremely high in Turkey. Child sexual abuse is a frequent problem in the world. Unfortunately, related studies, training and legislative regulations are not sufficient to solve this problem. It is observed that abuse cases increase in countries having weak and middle economies; however, the opposite evaluation is not completely correct. It can't be suggested that standard education programs, increased levels of income and the securing of justice are the only solutions. Sexual abuse training through standard methods are insufficient to prevent this problem. Educational specialists need to develop new educational methods to address the problem. The rehabilitation of child victims is as important as punishment of offenders. This study advocates that necessary steps should be taken for the widespread establishment of Child Protection Centers, which play a significant role in the rehabilitation and treatment of victims.

Keywords: Child sexual abuse, forensic medicine, penal code

Introduction

The World Health Organization defines all types of maltreatment against individuals under 18 years of age as child abuse and neglect. There are various types of abuse such as physical abuse, emotional abuse, sexual abuse and neglect (physical, sexual, emotional, medical). These are specified within the scope of abuse and neglect as all types of physical and/or emotional maltreatment, sexual abuse, neglect, negligence or exploitation for commercial purposes, which might result in actual or potential harm to the child's health, survival, development and dignity [1]. Child abuse is a worldwide problem. Although governments try to find solutions with their own local laws, child abuse stands on an increasingly important problem.

According to data from a study conducted by the World Health Organization in 2016, it was found that 23%, 36% and 16% of children suffered physical abuse, emotional abuse and physical neglect, respectively, while 18% of girls and 8% of boys suffered sexual abuse [2]. The Convention on Children's Rights (1989) that was signed by 197 countries (including India, Canada, the Netherlands, UK and Turkey) stipulates in Article 1 that a child means every human being below the age of eighteen years. Article 3 stipulates that governments undertake to ensure that child protection, and care is necessary for a child's well-being, having regard to the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her and to this end, governments are required to take all appropriate legislative and administrative steps, relevant to all activities concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, and that the best interests of the child shall be the primary consideration. In article 2, it is mentioned that States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards

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established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision. According to Article 19, governments shall introduce all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child [3]. As it is clearly understood from these articles, every individual below the age of eighteen years is a child who is entitled to protection on legal grounds against all forms of abuse and ill-treatment.

In the European Child and Adolescent Health Strategy report for 2015-2020, an action plan based on science and health with a multidisciplinary approach was created for the improvement of children's rights in accordance with the Convention on Children's Rights. This action plan explicates that supporting children's rights by legal grounds is a crucial requirement [4]. Legislative regulations regarding child sexual abuse vary from country to country and from culture to culture. Socioeconomic status, level of education, traditionalism and religious acceptance are distinctive as the main factors behind these differences. For that reason, this study aimed to demonstrate the similarities and differences between the legislative regulations in Turkey and those in other countries by examining legal practices with respect to "sex crimes against children" in the light of data on child sexual abuse in various countries with different cultures, religious backgrounds and socioeconomic development levels, and to contribute to the existing legislative regulations in Turkey on the basis of "children's rights" and "the best interests of the child" by suggesting additional regulations that can be included in the Turkish Criminal Code.

Materials and Methods

In this descriptive study, a comparison was made regarding the articles and practices in relation to sex crimes against children: in India, which is considered the "World's Rape Capital" in the eyes of the media as one of the countries with the highest rates of child sexual abuse cases; in Canada, which has a high levels of education and is considered a pioneer in terms of development the quality and standards of life; in the UK, which signed the 'Magna Carta' in 1215 considered the first political document that addressed the topic of freedoms for the first time, limited the powers of the king and gave certain rights and freedoms to the public; in the Netherlands, which is regarded as culturally rich and a country representative of liberty within in Europe; and in Turkey, which is known as the 'Cradle of Civilizations' connecting Asia and Europe, by reviewing the penal codes in these respective countries.

Limitations of the Study: Legal information from the studied countries were determined through a review of the literature.

Results

India represents 19% of the total child population in the world. 42% of India's population are below the age of 18 years. India is one of the countries with the highest number of child sexual abuse cases. It was found that a child under 16 is sexually abused every 155 minutes, a child under 10 every 13 hours, and one in

every 10 children in any period of time [6]. According to a study conducted by the Ministry of Women and Child Development involving 12,447 children in 13 states in India, 53.22% of children are sexually abused and 70% of these cases are not reported [7]. The Indian government introduced the POCSO Act in 2012 to better protect children from the increase in sex crimes, and through this legislation attempted to create a legal basis for fighting sex crimes. This Act determines the degree of punishment for a crime and, in accordance with the principle of the best interest of the child, provides a child-friendly environment throughout the entire process to prevent re-victimization of the child [8]. What is most interesting about the Act is that sexual contact (regardless of consent, willingness to marry, gender, etc.) with an individual below the age of 18 years is prohibited by law and criminal sanctions are imposed for such conduct.

Table 1. Population and economic aspects of countries [5].

	India	Canada	The Netherlands	UK	Turkey
Population	1,236,686,732	34,837,978	16,714,018	62,783,115	73,997,128
Gross National Product Per Capita	1,550	50,650	48,110	38,300	10,810
Economic Power	Middle	High	High	High	Middle
Income Inequality	33.9	32.56	30.09	35.97	40.03

Considering the studied countries generally;

Tracie et al. found in their study undertaken in 2014 that the rates of child abuse, sexual abuse and physical abuse in Canada were 32.1%, 10.1% and 26.1%, respectively [9]. Within their Criminal Code, Canada created legal grounds against such abuses. The most interesting aspect of the Criminal Code of Canada is that the law mentions peer relationships. Interesting exceptions within the scope of sexual offence crimes include cases in which: the offender is aged 12-13; the victim is 12-14 years of age with less than two years of age difference between the victim and offender; the victim has consented and the offender is not in a position of authority over the victim and the victim is 14-16 years of age with less than five years of age difference between the victim and offender; the victim has consented and the offender is not in a position of authority towards the victim and the victim is 14-16 years of age with more than five years of age difference between the victim and the offender; and the victim has a child or is pregnant and the victim and offender have lived together for at least one year [10].

Child abuse is a very important social problem in Europe as in most parts of the world. The prevalence of sexual abuse, physical abuse and emotional abuse in European countries is 9.6%, 22.9% and 29.1%, respectively [11]. In their study conducted in the Netherlands in 2010, Euser et al. reported that 33.8 in every 1000 children were maltreated, and in 3% and 37% of these cases were victims of sexual abuse and physical neglect, respectively [12]. It is noted that the criminal justice system in the Netherlands is, as opposed to many other countries, based on principles of rehabilitation and resocialization. Three main practices stand out within the scope of rehabilitation and resocialization. These practices include alternative sanctions, fines, suspended sentences

and other social punishments [13]. According to the Dutch Criminal Code, even penetrative sexual assaults can be converted into fines.

In a study by Radford et al. in the UK, it was found that one in every 20 children was sexually abused, one in every 14 children was physically abused, again, one in every 14 children was emotionally abused and one in every 10 children suffered neglect [14]. When the UK's Sexual Offences Act 2003 is compared to the laws of other countries, the longer penalty times are striking. If the victim is younger than 13 years and the offence involved sexual assault with penetration, the accused can be sentenced to life imprisonment [15]. Canada and the UK have different criminal approaches within their criminal justice systems, such as jury and non-jury trials, in addition to differences which are not seen in the criminal justice systems of other countries (Table 2).

According to 2015 data from the Turkish Statistical Institute, the number of children who were brought to the police increased from 2014 to 2015 by 4.4%, 46.9% of these children were victims and 39% of them were juveniles pushed into crime, with 62.4%, 10.4% and 7.8% of about 122 thousand children who were brought to the police being victims of crime suffering and injury, victims of sexual crimes and victims of crimes within the family, respectively

[16]. Articles 103, 104 and 105 of the Turkish Criminal Code include legislative regulations relating to child sexual abuse. In their study which was published in 2014 and conducted with 7540 students who were aged 11, 13 and 16 years in İzmir, Denizli and Zonguldak, using the ISPCAN child abuse screening tool questionnaire, Sofuoğlu et al. observed that 70.4%, 58.1% and 42.4% of the children suffered lifetime psychologically adverse childhood experiences (ACEs), physical ACEs and neglect, respectively, while 78.6% of them suffered more than one type of ACE [17].

When extenuating circumstances were examined by country, it was found that, interestingly, there were no extenuating circumstances in India which is the country with the highest rate of abuse cases. While the laws of the Netherlands also do not involve any extenuating circumstances, the UK laws include detailed regulations with respect to peer crimes. (Table 3)

When aggravating circumstances in sexual abuse crimes were examined, it was seen that every country had aggravating provisions for various reasons in their respective laws. Canada is different from other countries by not including exploitation of a trust relationship in sexual abuse cases in its laws, and by grading abuse crimes that involve the use of firearms. (Table 4)

Table 2: Penalty times for sexual abuse crimes by countries

	Penetration	Sexual Assault	Marriage Age
INDIA (POCSO-2012)			
<18 years old	>7 years or life imprisonment	3-5 years	Female: 18 years old Male: 21 years old
UK (Sexual Offences Act 2003, Articles 5, 6, 7)			
<13 years old	life imprisonment	Without jury; imprisonment for <6 months With jury; imprisonment for <14 years	16-18 with parental consent
<18 years old	Imprisonment for <14 years	Without jury; imprisonment for <6 months or fine or both imprisonment and fine, With jury; imprisonment for <14 years	18 years old
CANADA (Articles 151, 152, 153)			
<16 years old	Without jury; imprisonment for 90 days to 2 years, With jury; imprisonment for 1-14 years		16-18 with parental consent
16-18 years old (young person)	Without jury; imprisonment for 90 days to 2 years, With jury; imprisonment for 1-14 years		18 years old
THE NETHERLANDS			
<12 years old	Imprisonment for <12 years or fine		18 years old
<12-16 years old	Imprisonment for <8 years or fine		
TURKEY (Articles 103, 104)			
Until the age of 12	Cannot be less than 18 years	Cannot be less than 10 years (cannot be younger than 5 years in cases of molestation)	16-18 years with parental consent
Until the age of 15	Cannot be less than 16 years	Imprisonment for 8-15 years (3-8 years in case of molestation)	18 years old
15-18 years old	Imprisonment for 2-5 years		

Table 3. Extenuating circumstances in sexual abuse crimes by country

EXTENUATING CIRCUMSTANCES	INDIA	UK	CANADA	THE NETHERLANDS	TURKEY
Consent of the victim					if the victim is >15 years old;
Age of the offender		If <18 years old;	No punishment if the offender is 12-13 years old		
Age difference between the victim and offender		a) If the partners are 12-14 years of age: if the age difference is less than two years, the offender is not in a position of authority towards the victim and the victim has consented, b) if the partners are 14-16 years of age: if the age difference is <5, the offender is not in a position of authority towards the victim and the victim has consented			
		If the partners are 14-16 years of age; the age difference is more than five years, they have been living together for at least one year, they have a child or the victim is pregnant			depends on complaint
The offender's mistake as to the victim's age					
Age of the victim					If >15 years old;

Table 4. Aggravating circumstances in sexual abuse crimes by country

QUALIFYING CIRCUMSTANCES (AGGRAVATING)	INDIA	UK	THE NETHERLANDS	CANADA	TURKEY
Exploitation of trust/similar relationship	From 5 to 7 years	(+)	Punishment is increased by one third		Punishment is increased by one half
Exploitation of trust/similar relationship (Penetration)	>10 years to life imprisonment				
Aggravated injury			<15 years or fine		Punishment is imposed separately
Causing death/vegetative state			<18 years or fine		Life imprisonment
Use of firearm				first offence: 5-14 years repeated crime: 7-14 years, 5 years - life imprisonment in if <16 years old	
With gun/by more than one person			Punishment is increased by one third		Punishment is increased by one half
The victim's inability to defend himself/herself in terms of body/mental health			<8 years or fine	>5 years prison sentence with jury, >18 months without jury	

Discussion

Child abuse, particularly child sexual abuse, is a common social problem throughout the world [18]. Unfortunately, related studies, training and legislative regulations are not sufficient to solve this problem. India is a middle income country. The rate of sexual abuse as high as 53% in India⁸ suggests that there is an inverse relationship between income levels and the prevalence of sexual abuse. Another interesting point is that, according to Indian law, there are no extenuating circumstances in child sexual abuse crimes and punishments are not less strict than those in other countries. However, the presence of these two factors has not lowered the crime rates. When this data is evaluated together with the high crime rates in economically developed countries; it becomes clear that enacting laws to impose heavy penalties is not the only way to prevent child abuse.

It is observed that abuse cases increase in countries having weak and middle economies; however, the opposite evaluation is not completely correct. The rate of sexual abuse crimes is considerably higher in countries with strong economies, with fairer distribution of incomes and higher educational levels. It is noted that the rate of sexual abuse is 10.1%⁹ in Canada, 5%¹⁴ in the UK, and 9.6%¹¹ in European countries, including the Netherlands. These rates demonstrate that the problem of sexual abuse is not only the concern for low income countries but also for all countries, in other words, throughout the entire world. From a different perspective, it can be mentioned that standard education programs, increased income levels and ensuring justice might reduce this problem; however, it is not possible to say that such measures will eliminate or minimize this problem. It is evident that training for all individuals to raise awareness of sexual abuse, i.e. a worldwide problem, should be included in education programs in all countries in order to minimize this problem. Standard training in sexual abuse may be insufficient to prevent this problem, and education specialists should address this issue and develop new educational methods.

It is striking that 70% of sexual abuse cases in India are not reported. In undereducated societies where women cannot become financially independent, abuse cases remain hidden more often than in other countries due to the oppression of women. We believe that one of the most important factors in preventing abuse is to ensure women's financial independence. Further an educated woman who is economically powerful can remove her abused children from the abusive environment easily and can build a future for them with her own income without being economically dependent on another person.

When the penalties given between countries are compared, the higher sentences in the UK and the lower rates of sexual abuse crimes are noteworthy. Given that crime rates for abuse are high in low income countries with higher rates of punishment, such as in India, and the fact that crime rates for abuse in the Netherlands and other European countries with higher income levels but lower punishment rates are higher than in the UK, it can be said that longer sentence times can be more of a deterrent in accordance with the theories of sentencing in developed countries. This fact reveals the requirement that every country should develop solutions specific to each country to minimize this problem. We think that increasing the penalties in developed countries and

making efforts to raise social awareness in addition to increasing penalties in underdeveloped or developing countries will lead to a decrease in the crimes of child sexual abuse.

It is observed that the criminal justice system in the Netherlands differs from many other countries as it is based on principles of rehabilitation and resocialization [13]. Although the adoption of rehabilitation and resocialization principles in lieu of the imposition of longer sentence reduces the element of deterrence, it may help to increase reintegration of offenders into society. Such a legal approach seems logical considering the fact that this the logic for punishment involves first isolation and rehabilitation, then reintegration of the accused into society as a means of deterrence; however, it is suggested that this system is not sufficient on its own. Additionally, based on the example of the UK, it seems reasonable to prolong sentence times, in other words, prolong the rehabilitation period and add a punishment that gives more priority to deterrence in case of repeated crimes. In addition, it appears wise to increase the penalties based on the experience in England, in other words, to extend the rehabilitation period and to add a punishment that offers deterrence to recidivists even if they are rehabilitated.

Article 124 of Turkish Civil Code has been amended as follows: "Men or women are not allowed to marry before they turn eighteen. However, a man or woman who have reached the age of sixteen may be given permission to marry in extraordinary situations and for an important reason. If possible, parents or guardians shall be heard before the decision is made. This article particularly impacts on the issue of child brides in a developing country such as Turkey. It is proposed that the legal age for marriage should be limited to individuals who are eighteen years old regardless of any extraordinary situations, thus accepting that every individual under the age of 18 is a child in accordance with the Convention on Children's Rights and so ensuring child brides and child mothers can be prevented.

The definition of child sexual abuse in the Turkish Criminal Code has been amended to include all forms of sexual behavior committed against children who are fifteen years of age or less as they are not capable of perceiving the legal meaning and consequences of the act, and all sexual behavior committed against children through the use of force, threat, deceit or any other action influencing the will of the child. It is asserted that the law describes only sexual abuse and does not mention other forms of abuse and neglect, and such crimes should also be defined.

The Turkish Criminal Code, Section 1 of the Article 103 stipulates that a person who abuses a child sexually shall be sentenced to imprisonment from eight to fifteen years; a penalty of imprisonment for three to eight years shall be imposed on occasions when sexual abuse constitutes molestation; the penalty to be imposed shall not be less than ten years if the victim is twelve years of age or less and less than five years of age in the case of molestation; and the conduct of an investigation and prosecution shall be subject to a complaint by the parent or guardian of the victim if the offender of the offence in the case of molestation of a child. According to Section 2 of the Article 103, the offender shall be sentenced to imprisonment for not less than sixteen years in the case of the performance of sexual abuse by inserting an organ or instrument into the body; and the penalty to be imposed shall not be less than eighteen years if the

victim is twelve years of age or younger. According to Section 3 of the Article 103, in the event the offence is committed by more than one person; by taking advantage of the environment where people have to live together; against a person with a blood relationship including the third degree or a relative by marriage or by step father, step mother, step siblings or the adoptive parent, guardian, tutor, teacher, caretaker, or other persons in charge of providing health services or who has the obligation for protection or supervision; and by misusing the influence earned from a position in public office or a service relationship, the penalty to be imposed in accordance with the sections above shall be increased by half. Section 4 of the Article 103 has been amended as follows: In case the sexual abuse is committed against children described in section (a) of paragraph one (all forms of sexual behavior committed against children who are fifteen years of age or less but are not capable of perceiving the legal meaning and consequences of the act) by force or threat or children described in section (b) (sexual behavior committed against other children only through the use of force, threat, deceit or any other form influencing the will) by using a weapon, the penalty to be imposed in accordance with the sections above (103/1,103/2,103/3) shall be increased by half. Unfortunately, there has been no comprehensive study in our country on child sexual abuse. Based on our clinical experiences, we believe that such crimes are gradually increasing. However, we believe that the punishments are not a sufficient deterrent although they have been increased through amendments to the law. Section 1 of Article 104 of the Turkish Criminal Code has been amended as follows: any person who enters, without any force, threat or deceit, into sexual intercourse with a child who has reached fifteen years of age shall be sentenced to a penalty of imprisonment from between two and five years upon complaint. As it is understood from this article, sexual intercourse between two people under the age of 18 by mutual consent is not considered within the scope of sexual assault since only the victim's age is taken into account and there is no specific regulation on the age difference between the victim and offender. Different approaches are observed when the related legislation of other countries is examined. It has been seen that the Criminal Code of Canada mentions peer relationships in the laws and, in the UK, being under the age of 18 is an extenuating circumstance for the offender. We believe that peer relationships should be regulated in a separate article in the Turkish Criminal Code, and "age difference" limitations should be imposed in cases where at least one of the parties is a child. The rehabilitation of the child victim is as important as punishment of the offender, that's why we advocate that necessary steps should be taken for the widespread expansion of Child Protection Centers in our universities, which can play a significant role in the rehabilitation and treatment of victims.

Conclusion

In our study, it has been observed that even though punishments are severe in countries which has very different ethnicities and religious structures, and also different kinds of punishments are applied in developed countries, children are abused similarly. It was also determined that countries could not solve this problem on their own. Therefore, it would be beneficial for the states to come and work together on laws and child abuse education to solve this problem. We think that increasing the penalty rates, not reducing

the punishment, with increasing the awareness of children and society will minimize the abuse events.

Infection control measures should be updated according to the conditions of the unit, strictly adhering to the antibiotic policy in the use of antibiotics to reduce the reported high resistance rates.

Conflict of interests

The authors declare that they have no conflict of interest and any financial disclosures.

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Ethical approval

There is no need to take ethical committee approval

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