A Conceptual Inquisition on Sexual Crimes

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Abstract
In this paper, the starting point comprises the general philosophy of sexuality. Despite certain differences in various cultures throughout the world and social history regarding all matters of sexuality, many converging principles of mankind are also there to take notice. In this light, in this work, the dimension of criminality in sexuality is taken into consideration. Rape seems to be the most common type of violent sexual crime. The topic of sexual offences (milder crimes) in the legal framework is further developed and debated, with references to figures of authority. Sexual harassment seems to be the mildest form or degree of offence on a scale depicting the spectrum of sexual crimes. As a matter of fact, its mere definition emerged only in contemporary times, even though its presence had been a fact of social life, throughout the ages. In this paper, while a general survey is preferred, peculiarities due to Turkey as a separate country with its own cultural history, are also alluded to inappropriate places, along the course of debates.

Keywords
Crime, offence, deviance, sexuality

Sexual drive is one of the existing and rather strong carnal forces in man, just like it is in many other species. What distinguishes man from those other species in that respect, is checking and balancing this earthly desire with also vigorous and generally opposing or at least regulating ethereal and moral feelings.

Landis (1939: 83) affirms that “Among human beings, sexual taboos are as old as the races that they may change from place to place but are present in all societies”.

“Man lives and preserves his lineage. But society puts restrictions on sexual acts for its own welfare. For certain individuals and groups, society totally forbids expressing themselves sexually. Society deems this as a necessity” (Landis 1939: 96).

“Based on the general cultural pattern or the existing social taboos, sexuality itself takes on different meanings. Sexuality, an animal-like instinct in its origin, got embellished with customs and conventions and achieved its highest in romantic love and the institution of family” (Landis 1939: 96).

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Legal codes of countries have different outlooks regarding sexual matters. Turkish constitution has always been liberal in the sense of guaranteeing the confidentiality of private life. In the U.S. states, it differs in their treatment of the issue. In some states, acts like cunnilingus or fellatio are illegal even among married couples.

It is an obvious fact that good conduct is not an absolute concept, rather, it varies from place to place, culture to culture, and epoch to epoch. An author, Gustave Flaubert, who tried in court in the middle of the nineteenth century for daring to write an immoral work like *Madame Bovary*, is one of the prides of that country today, France, when it comes to classical novels.

Henry Valentine Miller’s (1891-1980) works were forbidden in his own country because they were associated with pornography. In a parallel manner, the full text of *Lady Chatterley’s Lover*, the masterpiece of the British novelist David Herbert Lawrence, got acquitted in London courts three decades after being written.

**DEVIANCE AND CRIME**

The roads leading to love are thorny, not at all smooth! And, she who burns my heart, is another’s bride, not a virgin!

From a Turkish ballad

First of all, it should be clarified that when one talks about deviance, one automatically means negative deviance, which is what the layman understands regarding the concept. For a sociologist, there is also a second type of deviance called the positive deviance, which refers to extraordinary role models for humanity like great heroes or men committed to philanthropic causes or nuns dedicating their lives to pious works.

Moreover, a sociologist would go ahead and make a further distinction between primary negative deviance and secondary negative deviance: The former means giving way to a passing temptation and indulging in a socially unacceptable or inappropriate act at young age, like pilfering something or chasing a female without shame or getting drunk and causing trouble somewhere, for instance. It may happen to any male student along the course of his moral development (see Figure 1). The latter, the secondary version, comprises internalizing similar wrongdoings and converting them into a sort of life style. Now, it is time to dwell upon the difference between deviance and a seemingly related concept, crime.

All deviance types are not necessary of criminal nature. Divorce for centuries had been considered a deviant practice and disapproved in many societies. Divorcees were like stigmatized, accordingly. But even then, the practice was totally legal, and the grounds for divorce were listed in law. Mentally ill people may fall into the category of deviance but are not criminals. Again, a stigma is in question. Homosexuality was regarded as deviance but not a crime. The starting point is the strength of a pressure group to influence the state to affect the law, the possibility of catching and penalizing the involved persons. In the realization of the latter case, one can talk about a crime. Now, both the society and the law condemn the act in question. (Charon 1989: 311)

“When it comes to sexual behavior, intercourses outside the scope of law or societal order, are considered as crime. In theory, openly done intercourse outside wedding, adultery is a crime, whereas intercourse in officially approved brothels is not a crime” (Adasal 1980: 224) (incarceration of a male or a female because of adultery was never literally applied despite the law item, and lately, the Turkish Parliament abolished the related item, rendering the act outside the scope of juridical matters).

Even though, it is not really possible to quantify the actual crimes happening, there is no doubt that especially after the two world wars, all over the world and in all social layers, tendencies to commit crimes including those of sexual nature, registered an increase. In the Turkish Penal
Code, related items are regulated under three chapters: (1) forceful rape, leading minors astray, and bullying with matters of chastity; (2) abducting a girl, a woman, or a male; (3) adultery; and (4) acts against general conventions of decency (exposing oneself in a manner not compatible with moral values and good manners, showing one’s genital region to others, injuring the feelings of people with obscene words and songs). Now, the fourth item theoretically covers a wide range of behavior patterns, while many sexually deviant acts are performed in concealment in the real world. (Adasal 1980: 226-227)

This last item, which Adasal qualifies as comprehensive or well-rounded has much more detailed equivalents in many other countries (After all, it is just a universal principle that no penalty can be applied without a specific law article defining the related act as a crime). In many cases, the judges in charge have to rely on precedents in coming up with a sound and fair verdict. It appears that, inspired by the clause in question, Ahmet Tezcan (1991) constructed his humorous but judicially consistent article, regarding this delicate issue.

The essence of his article distinguishes between molestation and picking on somebody sexually (daring to seek trouble). In the former case, the bodies of the victim and the actor do not necessarily get in contact, whereas in the latter case, insistent and continuous lustful moves involving physical touch are in question, even though the intent for an actual intercourse is absent.

Literally touching the body of the victim in question is the key determining factor in defining the boundary. Indeed, as Yamarellos and Kellens (1970: 56) point out, the Belgian jurisprudence also differentiates aggression toward good name and chaste honor, with the involvement of a touch (attentats aux moeurs) from its version without the accompanying touch (outrages aux moeurs).

Ahmet Tezcan starts his article with a sentence which means that the Court of Cassation came up with the final decision that patting and caressing which do not display perpetuity, do not fall into the category of attentats aux moeurs. He then goes on as follows:

Some authorities are of the opinion that a three times repeated act resembling the stanza “I kissed, I kissed and I kissed once more” in the famous (arabesque) song of the singer Neşe Karaböcek, should define the limit for the offence of “attentats aux moeurs”. However, if the actor, just like that good old tomeat (Schürzenjäger, coureur de jupons) in the Book of Dede Korkut (Dada Gorgud, Dede Qorqut or Qorqit ata), Bamsi Beyrek, can not pick up his pace, and goes ahead and gives a bite following three kisses, then he will deserve the penalty for sheer “attentats aux moeurs”.

Ahmet Tezcan puts into the milder category of outrage aux moeurs behavior patterns like el peşevi—literally, musical prelude or overture with the hand, the second word is of Persian origin, the slang idiom is described as handling the (clothed) genital region of a person, according to the Slang Dictionary by Altunç (1990: 95)—or pinching one’s cheek or touching one’s cheek, while he puts into the heavier category of attentats aux moeurs behavior patterns like rubbing or “whitewashing”.

The same author is curious about the exact definition of the element of continuity and wanders: If a rubber gets on the commuter train and positions himself just behind a woman among the crowd and gets some rubbing kicks, just how many stations must be bygone, in order for him to deserve the adjective “steady” or “continuous”?

OUTRAGE OF NORMS OF DECENCY BY A FEMALE

À Paris les amants sont vraiment sans façon!
From a song of Edith Piaf

It is not easy to attribute sexual crimes to females in general. The approach of the law is also different. For instance, if it is a female who indulges in an act of exhibitionism, it is not regarded as the same thing with a male’s corresponding act. Ahmet Tezcan, with
his humorous style, states that exhibitionism by a female is not in the category of violating public norms of good manners, but perhaps it may be evaluated as a surprise offer of generosity!

In a socio-cultural setting like that of Turkey, where with reference to a book title by Erdal Atabek (an activist and the ex-president of the Turkish Medical Chamber), femininity is oppressed and masculinity is compelled—thereby the title: “Oppressed Femininity and Provoked Masculinity”—this attitude is only expected.

In Turkey, at times, magazines report tragic news involving incidents where uneducated women from the lowest socio-cultural levels commit atrocities like chopping the husband by axe, with the aid of the gone-crazy-boyfriend. Such a crime lands in the category of “homicide”, but, indirectly it involves sexuality.

Adultery and unauthorized prostitution left aside, aggressive sexual offences do not involve women as perpetrators. Maybe it can be said that in Western societies or even more and more in upper social layers in developing countries like Turkey, the presence of gigolos constitutes a safety valve (corresponding to

**Figure 1.** A Student Chasing a Female While Whistling to Attract Her Attention (A Typical Sexual Harassment Scene). Source: illustrated by the author.
the ages-old safety-valve of officially tolerated/regulated brothels, which at least supposedly, divert the focus of potential evil-doers away from “the neighbor’s wife or daughter”). A woman who could afford to pay for a kind of “male prostitute” does not need to be in search of satisfaction by aggression or threat.

An interesting case history was mentioned by a boarding student stemming from the Mediterranean Section of Turkey, upon his return to his school in Istanbul from a winter vacation: Two female tourists run into a young provincial male. They take him into their car as if asking the road to a certain settlement. They give him a chewing gum and other offerings of food and drink. The next day, the man finds himself abandoned in the wilderness, near a town. He feels exhausted with a headache and numbness. His phallus is in painful erection. He hardly walks to the town’s hospital and talks about yesterday’s misfortune.

SEXUAL CRIME AND SEXUAL POTENCY

Yamarellos and Kellens (1970: 181) correct a very common misconception in people’s minds:

It is commonly believed that sexual crimes stem from very rigorous5 sexual instincts. In actuality, however, most sexual crimes can not be attributed to the richness of erogenous (érogène) bodily secretions. Instead, it would be more appropriate to say that the actors of such doings are persons who can not control their desires in the present life circumstances. Moreover, those desires in question are merely at the normal level or even below the normal level!

So, weak personality or opportunistic approaches may be at work, which is confirmed by a case history dating back to former years and recounted by a boarding student stemming from a small district of the Aegean province of Denizli: The narrator used to know another boy, a peer of his from another neighborhood of the town, by sight he was a delicate looking teen-ager with good facial looks and somewhat “camp” manners like shaking his fluffy hair into shape by an occasional jerk of his head. One day, an incident happened which everybody in town got to know by the word of the mouth. That adolescent was passing before the police station among his group of teen-ager friends, when the police chief in person, set his eyes on him and gave the order to his sentinel to go fetch him into the station. The sentry must have been puzzled with the unjustified order but choose to obey, anyway. He ran to the group and brought the boy.

The chief (who later proved to be drunk at the moment)—in the regulations, for any member of the police force, taking alcohol during work is enough reason to lose his job—locked himself into his office with the adolescent and with the threat of his official gun raped him. Borrowing the wording of the narrator,

Passing by the wrong place at the wrong time with his mincing gait, ruined the poor boy. Later, the event was a shame for the whole town. The perpetrator’s wife, an elegant-looking teacher, was reported to have shouted at his deviant man during the trial: “Did I not possess the precious genital organs that you were so madly fond of?”

According to Adasal (1980: 228), committers of sexual crimes may not be straightforward mentally deranged ones (lunatics in vernacular), but they are most probably degenerate psychopaths—nowadays, “sociopath” is coming to replace the word more and more—or persons undergoing very serious affective imbalances.

THE MOST CONSPICUOUS FORM OF SEXUAL CRIMES: RAPE

Rape is taking possession of a woman sexually by force and without her consent. Brutality, aggression, or even strangulation acts may accompany rape. Mostly, it is the act of a drunkard. The crime may be committed collectively10 by turns. Many anatomical findings indicating to the incident, the culprit can not get his trace lost. Some sickly situations mitigating the responsibility11 of the actor are rarely
Yamarellos and Kellens (1970: 183) state that in all sexual crimes, at the point of getting into action, the role of the victim is bigger with respect to all other kinds of criminality. The authors specify that the witness of the victim must be cautiously weighed especially in rape crimes. Mitomania (telling lies in a habitual and sickly manner), which is frequently observed among girls at the age of puberty, may lead authorities astray in decisions and cause legal mistakes.

CONCLUSIONS

Adasal (1980: 229) emphasizes “the psychological grounds of sexual crimes with respect to physiological grounds”, even though he admits that some sexo-psychologists advocate the opposite view. He further states the following.

Even if the reverse were true, this would not constitute a medical excuse because modern psychology asserts that man can harness his sexual upsurge or even convert that energy into useful and productive uses (sublimation mechanism like excelling in sports) as long as he has a moral training and fear of consequences.

Muller (1957: 358) seems to share the same outlook:

Forensic authority, after his examination of the person, can explain sexual abnormalities, nevertheless, he can not excuse them. This is because the discovery of an abnormal propensity and the reasons feeding the source of such a line do not suffice to pardon the crime in most of the cases. Whether the sexual impulse is normal or abnormal, the individual has the obligation to dominate it. Medical or psychiatric or ethical considerations let alone, this domination is simply a legal liability for a person, who is a part of the society he lives in.

Control is the key word. People are beings who have controls, who should have controls over their patterns of behavior, especially when their behavior involves possible consequences for other people, who are equally deserving to be a respectable part of the same society.

Notes

1. Based on the book De l’espoir à vous faire pleurer de rage, which comprises the French translations of the prison letters sent from Nâzım Hikmet to Kemal Tahir in the late 1940s—those are two literary giants of the Turkish Literature—Nâzım keeps asking Tahir to return L’Amant de Lady Chatterley by mail, which the latter keeps neglecting. Finally, the great poet explodes and issues a definitive order about returning the book. He adds that retrieving his book has become a matter of principles. In a later correspondence, his thanks to the novelist from Bursa prison make it clear that his friend must have at last complied with his wish and sent the book from Çankiri prison (both were political prisoners at the time).


3. Based on the given numbers, sexual crime rate in Turkey is the highest in city centers (İçli 1993: 115). Abducting girls is higher in rural areas, 62.1% versus 25.8% (İçli 1993: 115). Abducting a girl is resorted to mostly for the purpose of marriage (İçli 1993: 154). Sexual crimes are essentially committed by young persons. İçli (1993: 134) states that 58.3% of the committers are between the ages of 15 and 24. Among other crimes, they are still placed low. In the city of Diyarbakır (which has the sixth highest rate among provinces), within the age slice of 14 (the highest juvenile delinquent age), the sexual crimes comprise 3.5% of all crimes (Oto and Eğilmez 1991).

4. Here, normally abducting of a young male to use him for homosexual purposes is understood. The law does not normally consider a female as an actor of a sexual crime in an active sense. Exceptions do occur. While a Lycée student, our elderly geography teacher Selahattin Bey recounted a memory of his, from a former highschool where he had taught. He was a young teacher at Kayseri Lycée—this particular high school has the honor of sending two of his graduates to the seat of the presidency of the Turkish Republic—in the late 1930s. The city is known as a conservative center in Anatolia. A female student named Emine, abducted a handsome and athletic boy to the
Mountains (Erciyes) and obliged him to wedlock. (With a knowing smile on his lips, our teacher said that an accident must have happened between them there, on the mountain). Like a lot of abducting cases, it looks more like a consented elopement except that here the initiative came from the girl (the author).

5. Rubbing means brushing or scrubbing one’s frontal body portions against others in extremely crowded public transport vehicles. The word may stem from the French verb *frotter* or from once commonly used municipal Ford buses (Altunç 1990: 108).

6. “Whitewashing” (in Turkish, *badana*) means simulating the motions of an intercourse from behind the existing clothing. The word stems from the French verb *badigeon* (Altunç 1990: 49).

7. One might as well honestly hand it that in our day, the vast majority of the world is male-dominated and it is only a matter of differences of degree which varies among them. Real exceptions are to be found in history or in some rare societies like American Navajo tribe, where the first menstruation of a girl is an honored rite of passage deserving celebration, instead of being something ignored or concealed or even denied, as I remember from a book I read years ago, a book by Margaret Mead: Growing up in New Guinea [at the time of the publishing of the book (which is 1930), the men there claimed that their women were different (in the sense of being “exempt” from menstruation)] (the author).

8. Once my late mother, a retired school teacher, showed the picture of a homely-looking young woman with her head covered with a scarf (tied beneath the chin in the conventional provincial style), on the second page of a newspaper. She was the suspect killer of her husband, in compliance with her lover, also in the picture: a wild-eyed, hickish-looking young man with a thick moustache. Mother’s critical comment went as follows: “A modern lady might even ask if this woman can ever be capable of a tender feeling like love. She indeed is. Moreover, capable of the worst kind of love: merciless, selfish, and destructive!” (the author).

9. In one scene of a funny Turkish movie (Kâmil, the Lecherous) starring the actor Aydemir Akbaş, the same theme was in question. The hero has served his term from a conviction because of a sexual crime and is being released from the prison ward. His comrades farewell him and wish him good days outside. He objects with the words “which outside? As long as I possess that irresistible libido of mine (instead of the sophisticated word, he actually says “waist strings” in the figurative sense), you may take it for granted that shall end up here again, before the week is over!” In a similar manner, some think that people who are prone to tell or listen obscene anecdotes excessively are also those with strong sexual drives. The opposite is true. They are mostly men of a certain age, on the verge of losing their potency. Anatolian folklore in this respect is very well-directed since the archaic idiom qualifying such bull sessions is so elucidatory: “The delight of the emasculated ones” (*iğâş keyfi*). With a somewhat Freudian interpretation, indulging in such gatherings is like a vicarious compensation for the former doers (the author).

10. Adasal (1980: 230) writes that collectively committing a rape crime occurs among provincial, uneducated young males in Turkey.

11. Adasal (1980: 350) enumerates cases like brain concussions, brain syphilis, sclerosis of brain arteries but associates them with milder acts like exhibitionism. Meanwhile, Milliyet Newspaper dated October 3, 1993, informs the readers about a decision of the Court of Cassation regarding a rape incident. The perpetrator’s act in this particular case is considered as inadequate attempt for rape due to his premature ejaculation. The title of the news clipping is “Alleviation of the Penalty for Early Ejaculation”.

12. A similar idea was conveyed in the saying of a mutasawwuf (Islamic mystic/sufi), who I remember with some reserve as Şîbî (who had passed away in the solar year of 945 in Baghdad). The saying asserts that a person does not deserve disgrace just because he happens to have a shameful internal urge, but he does deserve contempt when he puts that ignominious wish into practice (the author).

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