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The Practise of Capability Approach in Child Marriages: The Case of Turkey

Çocuk Evliliklerinde Yapabilirlik Yaklaşımının Uygulanması: Türkiye Örneği

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Abstract

Restriction of freedoms emerges as an important human development problem in Turkey as well as in the rest of the world. This problem also hinders people's access to other capabilities, particularly if basic 'capabilities' such as education, health and income, which are important for the development of girls as individuals, cannot be achieved and lead to the ineffective use of developmental inputs by girls. From this point of view, in this study, the problem of child marriage is discussed in the context of talent approach due to the importance of the given situation both in Turkey and the world. Starting from the case of child marriage,

Öz

Özgürlüklerin kısıtlanması tüm dünyada olduğu gibi, Türkiye'de de önemli bir insani gelişim sorunu olarak ortaya çıkmaktadır. Bu sorun, özellikle, kızların birey olarak gelişmesinde önemli olan eğitim, sağlık ve gelir gibi temel 'yapabilirliklerin' elde edilememesi durumunda, diğer yapabilirliklere ulaşmada da engelleyici olmakta ve kalkınma girdilerinin kızlar tarafından etkin kullanılmamasına yol açmaktadır. Buradan yola çıkarak bu çalışmada durumun gerek Türkiye, gerekse dünya açısından önemi nedeniyle çocuk evliliği sorunu yapabilirlik yaklaşımı bağlamında ele alınmıştır. Çalışmada, çocuk evliliği olayından hareketle, bu sorunun

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the causes and consequences of this problem are boldly emphasized. In addition, within the framework of Nussbaum's capability approach, it is pointed out that in traditionally patriarchal societies, women's capacity was seen as less valuable and limited compared to men. This situation, therefore, might cause gender inequality. The capability approach provides a distinctive framework suggesting that justice in a society should be assessed based on people's ability to achieve what they have reason to value. Based on perspective, it proposes that the analysing an individuals' welfare should not be limited to what he or she has as a resource, but what she or he can do and be with this resource since resources are only instruments to achieve ends, or valuable beings and doings. In this study, gender inequality was tried to be highlighted through the interviews which have been done with child brides in the context of the capability approach. Finally, it is emphasized how the capability approach can be applied to the problem of child marriages and suggestions are presented.

Keywords: Nussbaum, Capability Approach, Child Marriages, Gender Inequality, Turkey

nedenleri ve sonuçları üzerinde durulmuştur. Ayrıca Nussbaum'un yapabilirlik yaklaşımı çerçevesinde geleneksel olarak cinsiyetçi toplumlarda, kadının yapabilirliklerinin erkeğe göre değersiz ve sınırlı olarak görüldüğüne dikkat çekilmiştir. Dolayısıyla bu durum toplumsal cinsiyet eşitsizliğine neden olabilmektedir. Yetenek yaklaşımı, bir toplumdaki adaletin, insanların değer vermek için sebepleri olan şeyi başarma yeteneklerine dayalı olarak değerlendirilmesi gerektiğini öne süren farklı bir çerçeve sunar. Perspektife dayalı olarak, bir bireyin refahını analiz etmenin bir kaynak olarak sahip olduklarıyla sınırlı kalmaması gerektiğini, kaynaklar yalnızca amaçlara ulaşmak için araçlar veya değerli oldukları için bu kaynakla neler yapabileceği ve bu kaynakla ne olabileceği ile sınırlı olması gerektiğini önermektedir. Bu çalışmada, yapabilirlik yaklaşımı bağlamında çocuk gelinlerle yapılan görüşmeler aracılığıyla toplumsal cinsiyet eşitsizliği vurgulanmaya çalışılmıştır. Son olarak çocuk evlilikler sorunu ile ilgili yapabilirlik yaklaşımının nasıl uygulanabileceği üzerinde durulmuş ve öneriler sunulmuştur.

Anahtar kelimeler: Nussbaum, Yapabilirlik Yaklaşımı, Çocuk Evlilikleri, Cinsiyet Eşitsizliği, Türkiye

Introduction

In this article, child marriages in Turkey are analyzed within the framework of Nussbaum's Capability Approach (CA), in line with the reports of a child bride interviewed by Düzen and Atalay (2014). This child bride was nicknamed 'Papatya'. Nussbaum asks in the Capability Approach, "What is each person able to do and to be?" Based on the case of 'Papatya', finding an answer to this question, therefore, was attempted in this article. Accordingly, first of all, the concept of child marriage, gender inequality, and the capability approach were tried to be explained. In addition, it is emphasized how

the capability approach can be used in the issue of child marriage and some suggestions are presented to reduce this matter.

The Concept of Child Marriage

Although the definition of "child", and consequently the concept of "early marriage" might differ depending on the sources, the accepted view on a global scale is that to consider under the age of eighteen as a "child", and previous marriages from this age as "early marriage" (Özcebe, 2010, p.2).

Child marriages, in other words, early marriages are defined as illegal marriages due to the fact that at least one or both of the spouses are under the age of 18, and they are not able to take responsibility for marriage and having a child physically, physiologically and psychologically (Boran, et al., 2013; Choe, et al., 2005; Çakmak, 2009; Kılıç, 2012; UNFPA, 2012; Myers & Harvey, 2011; Osotimehin, 2012). These marriages are usually carried out by the families' decisions forcibly without the consent of the children. As children are not free and fully capable of consent, child marriages are seen as a violation of human rights and children's rights (Osotimehin, 2012).

Some media and non-governmental organizations prefer to use the concept of "child brides" instead of "early marriage" in order to attract more attention to the issue. These institutions find it inconvenient to use the notion of "early marriage". One of the most important drawbacks of using the conception of "early marriage" is that the confusion of the perception of the child, and women, and thus married girls are directly treated as women (Aile ve Sosyal Politikalar Bakanlığı, 2015). At this point, the most determinative factor is the assumption that girls who married at early ages are no longer considered as a child. This acceptance has a variety of drawbacks. It is also a problem that girls are perceived differently by society compare to boys due to cultural factors such as social norms, and traditions besides the problem of consideration of these children as adults instead of being accepted by a child who is under the age of 18. The girl has perceived as having the ability to marry in some cases from the period of menstruation. However, in Article 1 of the Convention on the Rights of the Child (1989), the individual who is under the age of 18 is considered as a child.

Families and states are responsible for protecting children's rights and ensuring standards. In recent years, however, criticisms of the use of the term "child bride" have become increasingly common. Those criticizing the phrase "child bride" state that this situation leads to reduce the significance of the matter, and even leading to legitimate influence. Because they think that it is necessary applying to stricter statements in order to describe the occurrence of early marriages. Some experts speculate that these events should be considered as "sexual abuse cases", particularly based on the fact that some girls are forced to marry up with older men. The terms "child bride", "child marriage", "early marriage" or "forced marriage" continue to be used interchangeably in this environment where almost all of the terms used are criticized separately (Aile ve Sosyal Politikalar Bakanlığı, 2015).

Child marriages bring with them many problems such as violations of children's right to education. Many child brides are almost trapped in the house reclusively. Therefore, children's educational rights which are one of the most basic rights after the right to live are infringed.

When the current research related to child marriage is investigated, child marriages are seen mostly in the south-eastern and eastern regions of Turkey (Mihciokur, et al., 2010). Due to patriarchal and traditional society lifestyles, early marriages are regarded as normal and legitimate in these regions. According to studies, the proportion of marriages under the age of 18, come close to 40% among the total marriages in Turkey. The number of child brides is around 5.5 million in the world (Akin & Mihciokur, 2012; Myers & Harvey, 2011; Tezcan & Coşkun, 2004).

A report by the Convention on the Rights of the Child (UNICEF, 2014, p. 6) that the total number of women married in childhood will grow from more than 700 million today to approximately 950 million by 2030, and nearly 1. 2 billion by 2050. The number of girls under age 18 married each year will grow from 15 million today to 16. 5 million in 2030 to over 18 million in 2050. According to the Statistical Institute of Turkey (2016), the marriage rate of girls aged between 16 and 17 years is 5.2 %. Moreover, "Save the Children Organization" for International Day of the Girl Child stated 144 countries are ranked according to the quality of life of girls. Save the Children with respect to criteria such as child marriage, early pregnancy, and maternal deaths. In this respect, Turkey ranks 55 out of 144 countries (UNICEF, 2014, p. 24)

The problem of child marriages is a critical problem in Turkey, particularly in the eastern part of the country (Kaynak, 2014). This situation causes serious problems for girls because they are married much earlier than boys (Dalyan, 2011; Walrath, et al., 2003). This situation has some consequences for the girls' Bodily integrity, Bodily Health and Control over their environment, key capabilities for human functioning, and a life worthy of human dignity (Nussbaum, 2011a). This issue has been discussed in this essay using the Capabilities Approach (CA), a normative framework for examining questions of social justice. It has been also explained how the Capabilities Approach can help us understand the effects of gender inequality, using the case study of "Papatya", a woman who was married in childhood and was born in Diyarbakır which is located in the eastern part of Turkey (Düzen & Atalay, 2014).

Unequal opportunities and child marriages

According to the Convention on the Rights of the Child (UNICEF, 1989) which is accepted by the Republic of Turkey, " Every child up to the age of eighteen is considered a child, except in the case of reaching lawful age earlier "(cited in Kaynak, 2014, p. 29). According to the Child Protection Law (2005), a child is a person who has not reached the age of eighteen, even if she is mature earlier. From this point of view, marriages made before the age of 18 are considered "child marriages" and girls married before the age of eighteen are regarded as "child brides".

In Turkish society, a "good marriage" makes a significant difference to the status of girls' social life. This issue brings with it the consequence of ignoring the age difference between married girls and boys. In rural areas, in particular, girls can rarely decide on their marriage themselves (Forum on Marriage and the Rights of Women and Girls, 2001). Socializing girls for early marriage is still an accepted form of upbringing. Moreover, it is likely that a girl who marries at an early age may be exposed to domestic violence by her husband after marriage (Kaynak, 2014). Furthermore, according to a survey conducted by UNICEF (2005), on whether child brides are visited by their family and friends, continue in education or work, use birth control methods or go to the doctor for their health

problems, the results showed that such decisions are made by the brides' husband. In other words, child brides are not free to make important decisions about their own lives.

It is possible to say that economic pressures result in the early marriage of girls (Gottschalk, 2007, p.51). For instance, girls are married at early ages by their families both to ease the economic burden and to yield money via a “bride price” (Özcebe & Biçer, 2013). Sometimes girls want these marriages in order to have a more comfortable quality of life. Moreover, marriage is seen as a way out by girls who imagine that they will get rid of the financial burden of living with their own family and escape the labor that they have to bear in childhood. However, a girl who marries early for economic reasons is merchandised like metal and she does not have the right to speak in the family to whom she came as a bride (Türkiye’de Aile Yapısı Araştırması, 2011, p.75). This situation is considered to be the commercial exploitation of the child.

Commercial marriage in a child age group can also bring about sexual exploitation, oppression, and violence (World Health Organization, 2010). Early marriages first take girls’ right to education away and then often involves sexual exploitation. It is known that exposure to sexual abuse exposed at a young age can cause adverse effects in later development periods of an individual's life (Taner & Gökler, 2004). It is also considered that early marriages might be developmentally negative for girls (Kaynak, 2014). These marriages increase the domestic responsibilities of girls and these responsibilities increase with childbirth. In addition, restrictions placed on married women by society (e.g. she cannot walk in the streets alone) can lead to the isolation and even break-up of girls' social circles. This condition can make it difficult for children to acquire the social skills that they need to gain during adolescence. Additionally, adolescence is a period during which children acquire social skills as well as identity formation. Therefore, the marriage of the children before and during this period may prevent healthy identity formation (Gleitman, Fridlund & Reisberg, 2000).

Another drawback of early marriages is that girls who do not have enough information about prevention from pregnancy have a high risk of having an unintended pregnancy. Individuals who take responsibility for being a mother at an early age may be confronted with major problems. Child and adolescent pregnancies are also harmful in terms of bodily health (Başer, 2000; Özcebe & Biçer, 2013). Owing to the fact that bodily health, which is one of the ten central capabilities on Nussbaum’s list (see below), involves reproduction health, adequate nutrition, and shelter, the diminution of these factors threaten both human health and human dignity (Nussbaum, 2011b).

Gender inequality and capability approach

The capability approach provides a distinctive framework suggesting that justice in a society should be assessed based on people’s ability to achieve what they have reason to value. Based on perspective, it proposes that the analysing an individuals’ welfare should not be limited to what he or she has as a resource, but what she or he can do and be with this resource since resources are only instruments to achieve ends, or valuable beings and doings (Arun, 2018, p.237). Based on this conception of good life, the approach emphasizes the significance of what people are ‘able to do and to be’ in evaluating various subjects of social life, such as opportunities, choices, pluralism about values, equality, human dignity, social justice, and freedom in order to achieve well-being (Nussbaum, 2011a,

pp.18-19). It assesses real freedoms or opportunities to attain “human functionings” namely valued beings and doings (Deneulin, 2002; Robeyns, 2009; Alkire, 2005; Arun, 2016; 2018).

The capability approach has been taken a significant attention from not only scholars, but also policy makers since the beginning of 2000s. Although it is used for various purposes to assess different aspects of social life, such as development, quality of life, poverty, social choice, Nussbaum’s primarily makes use of the approach in order to identify unavoidable duties of public authority in order to create a just society (Nussbaum, 2011b, pp.28-29; 2000, p.101; 2011a, p.25) and extensively focuses on women’s capabilities in the framework of gender inequalities. In both advancing the capability approach and drawing on it for evaluative exercises, Nussbaum's capability approach aims to point out importance of a human life worthy of human dignity in line with Aristotelian conception of the good life. It is also a comprehensive approach aimed at promoting the conditions of human existence, the development of these conditions, a life with dignity, the upgrading of the quality of life, the development of a democratic society. The CA lists ten central Capabilities which are essential to a good human life and which can be used to make a quality of life assessment. These are Life; Bodily health; Bodily integrity; Senses, Imagination, and Thought; Emotions; Practical reason; Affiliation; Other species; Play; Control over one’s environment. Nussbaum’s list of fundamental capabilities can be summarized as follows: Life represents being able to live to the normal length of it; Bodily health highlights the importance of being healthy including reproductive health; Bodily integrity points out moving freely and being protected from domestic violence; Senses, Imagination, and Thought underline the person's point of view of life; Emotions represent being able to express joy, love, and sorrows; Practical reason emphasizes rational and analytical thinking; Affiliation is based on living together in the framework of understanding and respect with other people with regards to human integrity; Other species highlights the ability of humans to develop relationships with animals and plants; Play is based on the ability to enjoy and socialize from activities; Control over one’s environment emphasizes that the individual has the right to speak about her own life in terms of participating political and material environment. These capabilities give us the freedom to choose (Nussbaum, 2000, pp. 78-80; 2007, pp.76-78; 2011, pp. 24-25).

When we deal with the issue of child brides, it is clearly seen that gender equality cannot be realized unless freedom of choice for women is guaranteed. For instance, from the point of view of the lives of girls forced to marry at an early age, they are deprived from several central capabilities such as the Freedom of speech, Bodily health, Bodily integrity, Emotions, Play, and Control over their environment that have been extensively discussed by Nussbaum since she first proposed these capabilities approximately two decades ago. Due to the fact that in some parts of societies such as the eastern side of Turkey, many of the child brides are not able to go to school, are dependent on their husbands, and live an obedient life by staying away from the social environment (Ayaz, Ayaz & Soylu, 2012). Even if they want to go to school, they have no freedom of speech and control over their environments since they cannot make their own decisions about their lives. Moreover, child brides often have to obey their husbands. To give a concrete example, it would be said those child brides are unable to decide for themselves when and how many children they want to give birth. This situation might harm their bodily health and integrity. Furthermore, owing to the fact that they do not participate in school or work life, they become isolated from social life and it will be difficult for them to make friends. As a result, they are also deprived of emotion and play capabilities.

Application of the capability approach

According to Nussbaum (2011a), the Capability Approach (CA) has been provisionally defined as an approach to comparative quality of life assessment and to theorizing about basic social justice.

CA asks the following question: “What is each person able to do and to be?”. Instead of using as a foundational satisfaction of the majority in order to be able to provide equality and justice in the society, CA proposes to on each individual who takes part in the society and emphasizes that each individual is valuable, therefore, they deserve a dignified and respectable life as a human being. For this reason, it is necessary that if everyone has equal opportunities to shape their own lives on what they aspire to do and be, thus this will enable them to have human dignity and to flourish in life. CA draws attention to the capabilities, or freedoms, as well as personality traits of individual in a sense that if they are able to achieve what they can do and be with their resources which can take various forms such as income, rights, entitlements or diverse forms of commodities. In this regard, it has been explained how to apply the CA by starting to give information about a particular case, the case of “Papatya” who was married in childhood.

“Papatya” is forty-three years old. Since she has never gone to school, she is deprived of the capabilities of Senses, Imagination, and Thought; Emotions; Practical reason, Affiliation, and Control over one’s environment. When she was fifteen, she got married to someone who was fifteen years older than her. Getting married at an early age is an important risk factor that puts her bodily health in danger. According to Nussbaum (2011a), bodily health can be described briefly as the ability of a person to have good health, involving reproductive health; adequate and balanced nutrition, and meeting the need for shelter. Since she was still fifteen years old when she got married, reproductive health could be affected adversely by this situation.

Nevertheless, whatever our elders decide concerning our lives, no one objects. Their decisions are final and usually undisputed. This is to say that girls do not have the right to speak and raise their voice against the decisions taken by their elders. Therefore, she lacks control over her environment which is, according to Nussbaum, is one of the foundational, or central, capability. Nussbaum’s identification of control over one’s environment can perhaps be defined adequately as having the capability and right as an individual to speak about political and social issues with regards to freedom of thought and expression, right to legal remedies, finding a job, and having equal rights with other employees in the workplace. On account of the fact that “Papatya” has no voice about her own life, she lives a life on the basis of others’ requests and needs –she is a means to the ends of others.

Moreover, she has eleven children of seven boys and four girls. Her daughters are aged fourteen and sixteen but they did not continue to go to school as they too were married. For this reason, her daughters, like their mother, also are deprived of the capabilities specified by Nussbaum as “Senses, Imagination, and Thought; Emotions; Practical reason, Affiliation, and Control Over One’s Environment. They did not have the ability to choose the people they wanted to marry with their own free will. Therefore, their senses, feelings, thoughts, and imaginations did not make sense in order to design their future. Since there were family members who would do all of this on their behalf. Furthermore, as the freedom to choose the person you want to marry puts them in the driver’s seat

when they are deprived of this freedom, they may not meet their affiliation and control over their environment.

According to “Papatya”, early marriages are not a big deal for women. She said what else can be done in this case as she thinks girls should get married, have children and serve their husbands. She did not know that early marriage was forbidden. Nonetheless, even if she had known, she would not have complained since it was her destiny (Düzen & Atalay, 2014).

Could not it be a completely different life for Papatya? What could have been done for “Papatya”, who had been married early imprisoned and taken away from social life, who had children at early ages and thought that being a child bride was a constant fate? When we look at the expressions of “Papatya”, it is obviously seen that she is not aware of her abilities. She perceives that early marriages are normal and even embraces this situation because she has allowed her daughters to be married at the age of childhood. Nussbaum (1987) suggests that the preferences of the individuals can be distorted or manipulated by the unjust social structure, through which she points out social conditioning of people’s valuation, as what happens in the case of “Papatya”. She also points out that they may have been taught not to value certain functions that make life valuable, as well as those who have learned to not want what their culture has taught them not to have (Nussbaum,1987). “Papatya” is not aware that she is deprived of even the most basic rights such as going out, education, making a choice, laughing, and having fun as an individual.

Conclusion

Child marriages strengthen the unequal position of women in society. It is a barrier to access to education, health, and work opportunities. Therefore, it is necessary to disseminate the practices to increase the position of women in the community. Regardless of the cause, prevention of early marriages and elimination of contradictions in this matter, raising awareness on the issue, and pursuing the state should be ensured in terms of public health. The main responsibilities of the state should be to monitor and evaluate the developments that are applied in the country and modify them in case of necessity. Legislation should be rearranged and legal adaptation of children and families must be provided when monitoring is required. Finally, while the state is a follower of applications, it has to work together with non-governmental organizations and the media.

The most important institutions for protecting young women against child marriages are schools. Teachers can play a key role in awareness-raising and monitoring in places where children are at risk for marriage. The reasons for dropping out of school from the teaching institutions could be revealed and legal action could be taken to stop the child from being married. Papatya, however, stated that she had never been sent to the school. In fact, this situation causes another abuse of rights. The inability of the child to attend educational institutions, to be in a negative position in society, and lose the freedom to express herself is a threat to human rights – and capabilities? When minors get married, they often lose both the “child” position and the protection it brings with it. Sanctions should be applied in cases of non-compliance with the law on children. Non-governmental organizations and the media should take priority in these studies. Legal arrangements must be made in child marriage. Imams (Muslim religious leaders or priests in a mosque) should warn the families who want to keep religious

marriage without formal marriage, and they should not take part in the process. Due to the fact that this type of marriage is only based on a religious ceremony, it is not legally valid.

Although both sides are influenced by this situation, it is an undeniable fact that women are more negatively affected by this condition compared to men. For example, since women are not aware of their rights such as life, education, and entertainment, they are not able to function sufficiently in social or political fields. This situation clearly shows that if women learn their rights and are actively involved in social life, gender inequality can be reduced and women can have a voice in vital issues which affected society widely as men. Even women who play an active role in social life cannot have equal rights with men. When we give a concrete example, women receive a lower salary than men even though they do the same work as men.

Nussbaum (1999), stated that disadvantaged women or generally disadvantaged individuals may be incapable of developing a critical approach in terms of their unequal conditions and the injustices they have experienced. In other words, according to Nussbaum (2002), they may be individuals who do not know, think, complain and protest or are unaware of these injustices. For this reason, the definition of their capabilities to be guaranteed by political authority and the society they live in cannot be left to them. Nussbaum's argument is based on the assumption that disadvantaged groups have a false consciousness and are not aware of their real interests and do not have a critical and multifaceted view of their own disadvantages (Arun, 2022, pp. 13-15), such as these child brides because of social and economic structure.

In both cases, families are known to be poor and uneducated. In families where the socio-economic structure is strengthened, early marriages probably will disappear significantly. Thus, the initiative of the state is critical. Moreover, counseling centers may be opened in order to support majors who are married early due to social pressures. Finally, it is highly important that distance education opportunities are provided for the children and be offered a chance to go to university with an advanced stage who are married early.

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