
THE STUDY OF KIDNAPPING & ABDUCTION AND ITS EFFECTS ON SOCIETY

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ABSTRACT

Kidnapping represents an infringement upon an individual's personal freedom by forcibly or deceitfully taking them without their consent and without any legal justification. It's often seen as a severe form of false imprisonment, which itself is a common law violation involving unjustly restricting someone's liberty. While both offenses carry severe penalties including imprisonment, they can only be tried through indictment.

This exploration will initially delve into the historical context of this crime and examine recent cases. Abduction, on the other hand, involves taking someone through persuasion, fraud or force. Kidnapping and abduction differ in several aspects; abduction is an ongoing offense, whereas kidnapping isn't. In kidnapping, the consent of the person taken is irrelevant, but in abduction, the person's voluntary consent serves as a defence. One cannot be found guilty of abduction if tried for kidnapping unless a distinct charge is presented.

Kidnapping, according to Walker, is the common name for the common law offence of carrying away, or secreting, of any person against his will, or against the will of his lawful guardians. It may be constituted by false imprisonment, which is total restraint of a person and his confinement without lawful authority or justification.

The aim of the study is to understand the factors and consequences of the kidnapping and abduction and how it affects the victims and their family and what are the affect of kidnapping On the community. The subject matter of research being multi-disciplinary, analytical and comparative, therefore this research paper has adopted "Doctrinal research methodology". The study incorporates analytical understanding of landmark judicial authorities, pronouncements which focuses the analytical understanding of opinions expressed by Honourable Supreme Court judges on kidnapping and abduction cases.

Keywords: Kidnapping, Abduction, Child, Community, Crime.

Introduction

In the terminology of the common law in many jurisdictions, the crime of kidnapping is labelled abduction when the victim is a woman. In modern usage, kidnapping or abduction of a child is often called child stealing, particularly when done not to collect a ransom, but rather with the intention of keeping the child permanently¹. The word “kidnapping” has been derived from the word ‘kid’ meaning child and ‘napping’ to steal. Thus the word literally means “child stealing”. Kidnapping under the code is not confined to child stealing. It has been given wider connotation as meaning carrying away of a human being against his/her consent, or the consent of some person legally authorised to accord consent on behalf of such person. The study aims to know about the kidnapping and abduction in India.

Kidnapping laws have been found as far back as three thousand years, where it was written in ancient Jewish law that "Anyone who kidnaps another and either sells him or still has him when he is caught must be put to death" . The earliest ancient English kidnapping law was called "plagium," and was also punishable by death. The term "kidnapping" is said to have emerged in English law in the late 1600s, referring to the abduction of persons who were then transported to the North American colonies for slavery. William Blackstone, writing in the late 1700s, described the law of kidnapping as the "forcible abduction or stealing away of a man, woman, or child, from their own country, and sending them into another"². "This is unquestionably a very heinous crime, as it robs the king of his subjects, banishes a man from his country, and may in its consequences be productive of the most cruel and disagreeable hardships; and therefore the common law of England has punished it with fine, imprisonment, and pillory".

Different Categories of kidnapping

In recent years, against the backdrop of rapid globalization and increased pervasiveness of ICT (information and communication technology), kidnap and ransom has become a billion-dollar industry in which major changes have taken place. Next to classic ransom kidnapping, new Categories have flourished, with peculiar traits that deserve attention for both credible research and improved enforcement.

¹ Black law Dictionary

² William Blackstone (p.955)

- Insider kidnapping
- Express kidnapping
- Tiger kidnapping
- Terrorist kidnapping
- Piracy for ransom
- Virtual kidnapping

The global kidnapping epidemic has brought close cooperation between jurisdictions, as well as effective implementation by the largest number of countries of international standards and preventing measures against money laundering, terrorist financing, and corruption, to the forefront. In the transnational setting, however, the differing public good aspects of defensive and proactive measures magnify the risk of collective action failures when implementing such policies, with potential over supply of the former and under supply of the latter (Enders and Sandler 2005).³

The top ten countries with the highest rate of kidnapping

Worldwide more than 50,000 people get victimized by kidnapping for ransom every year. Although so many countries are today listed as “countries of risk”, it is nevertheless a fact that 90% of all kidnappings occurs in the “Top-Ten” list of countries of risk. The “Top-Ten” list as of 2022 includes the following countries:

1. Turkey — 42.669
2. Lebanon — 15.384
3. Kuwait — 12.69
4. Canada — 10.285

³ Encyclopedia of Law and Economics

5. Belgium — 10.245
6. South Africa — 9.569
7. New Zealand — 9.508
8. Pakistan — 9.452
9. Eswatini — 9.354

Victims of kidnap for ransom

Individuals at risk in today's "kidnap for ransom industry" include:

- Middle-class citizens living in countries of medium to high risk
- Business employees and representatives
- NGO workers and representatives
- Journalists and News reporters
- Expatriates and their families
- Business Executives
- Wealthy people and members of their families
- Diplomats and Dignitaries
- Celebrities and their families ⁴

International and National Provision Relating to Kidnapping and abduction

In India kidnapping and abduction provisions contain in Section 359 to 374 of Indian Penal Code but internationally different countries have some similar and different provisions in their

⁴ Dan Sommer & Anna Jemiolek : Crisis Response Guide_kidnap & ransom Guide

legal codes from Indian provision. Some of these provisions discussed below:

- **United States Of America:**

In America most kidnapping charges are prosecuted under the state law, but there are situations where kidnapping incidents could be charged as a federal offence. The offence of kidnapping is punishable as federal offence under section 1201, 1203 and 1204 of United States Code. But in India the offence of kidnapping is punishable under Indian Penal Code which is applicable to whole India.

- **United Kingdom:**

In United Kingdom the offence of kidnapping is punishable under Child Abduction Act 1984 . There are two part, the part 1 contains offence under law of England and Wales and part 2 contains offence under law of Scotland.

- **Australia:**

In Australia the offence of kidnapping is punishable under the Criminal Code 1899, as offence against liberty: Section 354 to section 359. Kidnapping defines as a person kidnaps another person if the person unlawfully and forcibly takes or detains the other person with intent to gain anything from any person or to procure anything to be done or omitted to be done by any person. The penalties and sentences Act 1992, section 161 Q states a circumstance of aggravation for an offence against this section.

- **China:**

In China kidnapping is punishable under Criminal law of the People's republic of China contains kidnapping provisions under Article 238 to 241. Chapter IV Crimes of infringement upon the Rights of the Person and the Democratic Rights of Citizens; this Chapter contains the provisions relating to kidnapping.

Article 238 defines Whoever unlawfully detains another or deprives him of his freedom of the person by any other means is to be sentenced to not more than three years of fixed- term imprisonment, criminal detention, control, or deprivation of political rights. In circumstances where beating or humiliation are involved, a heavier punishment is to be given.

- **India:**

Indian Penal Code 1860: Chapter XVI of offence affecting the human body or offence affecting life contains the provisions relating to kidnapping and abduction from section 359 to section 374

I. Section 359 : Kidnapping.

Kidnapping is of two kinds : Kidnapping from India and kidnapping from lawful Guardianship.

The literal meaning of ‘kidnapping’ is child stealing.

But there may be cases in which the two kinds overlap each other. For instance, a Minor may be kidnapped from India as well as lawful guardianship. A bare perusal of the provisions clearly shows that the legislature did not confined to constitute the offence only if a minor girl is taken away from the place where she used to reside but the emphasis is upon taking away the girl from the “lawful guardianship”.

II. Section 360 : Kidnapping from India.

Whoever conveys any person beyond the limits of India without her consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India.

Case: Hari Bhai v state⁵

In this case it was held that the offence under this section may be committed on a grown up person or a minor by conveying him or her beyond the limits of India. If a person kidnapped is above 12 years of age and has given consent to his and her being conveyed beyond the limits of India, no offence is committed. Now, the age limit for boys is 16 and for girls 18 under Act XLII of 1949.⁶

III. Section 361: Kidnapping from lawful guardianship.

⁵ (1980) 20 Bom LR : 42 Bom 391.

⁶ Ratanlal & Dhirajlal: Indian Penal Code

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation- The word “lawful guardian” in this section includes any person lawfully entrusted with the care or custody of such minor or other person.

Exception- This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such Act is committed for an immoral or unlawful purpose.

IV. Section 362: Abduction.

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

“The expression “deceitful means” includes a misleading statement. It is, really speaking, a matter of intention. The intention of the accused is the basis and gravamen of the charge. The volition, the intention and conduct of the woman do not determine the offence. The offence of abduction under section 362 of the code involves use of force or deceit to compel or induce any person to go from any place.

V. Section 363: Punishment for kidnapping.

Whoever kidnaps any person from India or from lawful Guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

This section must be read with Section 361. The offence of kidnapping from lawful Guardianship penalised by this section is the offence which I'd defined by section 361. The person against whom the offence is committed must be under the age of sixteen, if a male, and under the age of eighteen, if a female.

VI. Section 363A: Kidnapping or maiming a minor for purposes of begging.

- 1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- 2) Whoever maiming any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.
- 3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purpose of begging.

VII. Section 364: Kidnapping or abducting in order to murder.

Whoever kidnaps or abducts any person in order that such person may be murdered or may be disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

VIII. Section 364A: Kidnapping for ransom, etc.

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehensive that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any Act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

It is relevant to point out that section 364A had been Introduced in the IPC, 1860 by virtue of Amendment Act 42 of 1993. The statement of objects and reasons are as follows:⁷

⁷ Ratanlal & Dhirajlal: Indian Penal Code

“ Statement of objects and Reasons – kidnappings by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of Law have proved to be inadequate as deterrence. The law commission in its 42nd Report has also recommended a specific provision to deal with this menace. It was necessary to amend the Indian Penal Code to provide for deterrent punishment to person committing such acts and to make consequential amendments to the code of criminal procedure, 1973.

IX. Section 365 : Kidnapping or abducting with intent secretly and wrongfully to confine person.

Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Case:- Fiyaz Ahmed v State of Bihar ⁸

Where there was sufficient evidence to show that the victim woman was abducted from her house and then taken to different place which included confinement to one place till she was recovered by the police, it was held that the accused could be convicted under this section and section 368 but not section 366 .

X. Section 366 : Kidnapping, abduction or inducing woman to compel her marriage, etc.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with

⁸ 1990 Cr LJ 2241 SC; AIR 1990 SC 2147

another person shall be punishable as aforesaid.

XI. Section 366A :- Procreation of Minor girl.

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any Act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

XII. Section 366B :- Importation of girl from foreign country.

Whoever imports into India from any country outside India or from the state of Jammu and Kashmir any girl under the age of twenty one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

XIII. Section 367 :- Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which extend to ten years, and shall also be liable to fine.

XIV. Section 368 :- Wrongfully concealing or keeping in confinement, kidnapped or abducted person.

Whoever knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.⁹

⁹ Ratanlal & Dhirajlal: Indian Penal Code

XV. Section 369:- Kidnapping or abducting child under ten years with intent to steal from it's person.

Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

XVI. Section 370:- Trafficking of person.

Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or receives, a person or persons, by-

First.- using threats, or

Secondly.- using force, or any other form of coercion, or

Thirdly.- by abduction, or

Fourthly.- by practising fraud, or deception, or

Fifthly.- by abuse of power, or

Sixthly.- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or receive Committed the offence of Trafficking.

Amendment of 2013.- Vide the Criminal Law (Amendment) Act 2013 (Act 13 of 2013), the entire section has been changed so as to enlarge the scope of the offence and include within it's purview not just the mischief of slavery, but Trafficking in general of Minors and also adults, and also forced or bonded labour, prostitution, organ transplantation and to some extent child marriages.

XVII. Section 370A:- Exploitation of a trafficked person. ¹⁰

¹⁰ Ratanlal & Dhirajlal: Indian Penal Code

□ Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

□ Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

XVIII. Section 371 :- Habitual dealing in slaves.

Whoever habitually import, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with imprisonment for life or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

XIX. Section 372 :- Selling minor for purposes of prostitution, etc.

Whoever sells, let's to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

XX. Section 373 :- Buying minor for purposes of prostitution, etc.

Whoever buys, hires, or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

XXI. Section 374:- Unlawful compulsory labour.¹¹

Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Judicial Contribution against kidnapping and abduction

Supreme Court judgment

- **S Varadarajan v. State of Madras**

DATE OF JUDGMENT: 09/09/1964

Facts of the case:

- Varadarajan, the appellant was living next to Savitri's (a minor girl) house. They talked every day and became good friends. One day, Savitri's sister, Rama caught them talking and asked her about it. Savitri told her that she wanted to marry him. Rama told her father about this who inquired Savitri. She started crying but didn't reply to her father's question. Consequently, he decided to send her to a relative's house, away from Varadarajan.
- Next morning, Savitri called the appellant and told him to meet her on a certain road. They met and she sat in his car. They both went to the house of P.T. Sami with a view to take him as a witness to their marriage. They went to the Registrar's office where they both got their marriage registered. Thereafter, they went to Sattur, Sirkulam, Coimbatore, and Tanjore.
- On the morning of the day she went away, her father, Natraj realised she was missing and tried to find her around the area where they lived. However, all his attempts were futile and he filed a complaint at the police station. The police took up the investigation and ultimately apprehended the appellant at Tanjore.

¹¹ Ratanlal & Dhirajlal: Indian Penal Code

Issues

Whether the essential of 'taking' of Savitri was fulfilled or not?

Judgement of the case:

- The court held that where a minor girl leaves the protection of her father to join the accused, knowing and completely understanding the consequences of her act, it cannot be said that the accused has taken her away from the keeping of legal guardian.
- In such case, for the accused to be held guilty, it must be established that the accused induced the minor or actively participated in developing such intention in her mind, either immediately prior or at some prior stage of her leaving her father's protection.
- The accused cannot be held guilty simply because after leaving her guardian's house willingly she joined the accused and the accused encouraged her to not return to her guardian's house by taking her to different places.¹²

High Court judgment

- **Netra Pal vs The State (Nct Of Delhi)**

Facts of the case:

- The appellant Netra Pal was known to Master Tanu Johia, a 6-year-old boy. One day he had taken the boy along with other boys on a joy ride in a Rickshaw. While he dropped the other boys, he did not drop off Tanu. His mother had thought that Netra Pal would come back with her son in a while. When he didn't come back, she told his father. He tried to find him around the area where they live, but failed to locate them and filed a police report.
- The police went to the appellant's village and found him there along with the child. He was apprehended and a letter asking for Rs. 50,000 in ransom was found in

¹² AIR 1965 SC 942

his possession.

Issues

- What do the words “To pay ransom” stand for – is it enough to show that kidnapping or abduction was done with an intention to extract ransom or is it necessary that such demand must be communicated?
- Whether the letter recovered from the appellant would constitute as demand for ransom?

Judgement of the case:

- The court held that mere recovery of the letter assumed to have been written by the appellant demanding Rs. 50000 for the safety and return of the child is not enough to cover “to pay the ransom” by itself. Demand by a kidnapper is an essential ingredient of the offence because, for the purpose of getting paid ransom, demand must be communicated.¹³

Findings

- As the NCRB report show the details that female between the age of 16 to 18 years were mostly kidnapped in India in 2022 and the women between the age of 18 to 30 years. The data also show a mostly rising trend in the figures of missing Children, a spike of 7.5% in 2022 in comparison to 2021. According to data 83350 Children were reported missing last year out of which 20380 were male, 62946 were female and 24 were Transgender.
- The data for 2022 also show that 76069 Children were reported kidnapped during the year, of which 62099 were female.
- Uttar Pradesh was the state with highest rate of kidnapping with 16460 people followed by Maharashtra with total kidnapping of 12461 people in 2022.

¹³ 2001 IIIAD Delhi 451, 2001 CriLJ 1669

- Mizoram had the lowest rate of kidnapping with 10 person get kidnapped in 2022.

Conclusion and Suggestions

There are some of the negative effect of kidnapping like psychological trauma, fear and lack of trust. Essential to combating Trafficking of children is the cooperation between the legal systems, the government bodies and the non government bodies around the globe. The passing of deterrent laws for the trafficker, as opposed to the victim is a step towards reducing the occurrence of Trafficking in children, however one must bear in mind that the Criminal mind will always find its ways to circumvent the laws passed.

Solutions to kidnapping and abduction

There are Solution which when applied will help reduce the rate of kidnapping In any society or country. Among them are:

- Training Anti kidnapping and Abduction
- Monitoring the activities of the policemen
- Seriously Punishing any kidnapper caught
- Job creation.