

Abduction of Infants and Illegal Adoption of Abducted Infants and Its Legal Situation on Adoption Laws in Sri Lanka

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Abstract— *Rights of the child has become more irrefutable moral phenomenon of out of the human rights system. Orphans or children, whose parents cannot support them, can be adopted under procedure laid down by the Adoption Ordinance in Sri Lanka No 24 of 1941 and Convention on Rights of Child, 1989. Adoption law always expects the best interest of the child and protect the child's welfare and security. However, in the Sri Lankan society abduction of infants and illegal adoption exists as a hidden crime which does not report mostly. It has been reported several cases on infant abduction, which shows that has become a burning issue. This research is basically discussed under two aspects, which is infant abduction and illegal adoption of the abducted infants. The issue is discussed along with the adoption laws in Sri Lanka. This study intends to critically evaluate the contemporary national laws in Sri Lanka regarding child adoption. The main objectives of this research is to identify the loopholes of the existing laws relating to the issue of infant abduction and illegal adoption. It is also intended to propose suggestions to the prevailing law to reduce infant abduction and illegal adoption. Further it was identified that it is necessary to have more legal provisions to curb this crime. Furthermore this study also suggests that there should be adequate regulations at the hospitals to prevent such threats of abducting infants. Research methodology is largely based on qualitative approach which analyses the contemporary national legislations and relevant documentary sources from books, journals, and websites relating to this area. Further, this research extensively examines the decided case laws of national and international arena and they have been analysed, compared and criticized.*

Keywords— *Abduction of infants, illegal adoption, adoption laws*

I. INTRODUCTION

“The abduction of a child is a tragedy. No one can fully understand or appreciate what a parent goes through at

such a time, unless they have faced a similar tragedy. Every parent responds differently. Each parent copes with this nightmare in the best way he or she knows how” stated by John Walsh who hosts the TV series America’s Most Wanted when his son was abducted.

The abduction of the infants has become a burning issue within the recent past. It has been reported in several cases that the infants are abducted from the hospitals or health care centres or homes or other places and those infants are given in illegal adoption. Nevertheless thankfully in most of the cases where infants were abducted for illegal adoption, the abductors were caught and the cases have been resolved within few days and the babies were return to their rightful parents.

The abduction of infants for illegal adoption is a global problem. It also has become a challenge for the law making bodies to curb this threat because there must be a separate law regarding this offence and must give sever punishments to the offenders who are liable for the illegal adoption of the abducted infants. Recently even in Sri Lanka, there has been few incidents where new born babies have been abducted or tried to replace the infants at the hospitals with or without the help of the hospital staff.

This research will discuss under two topics which are infant abduction and illegal adoption of the abducted infants. The main objectives of this research is to identify the loopholes of the existing laws relating to the issue of infant abduction and illegal adoption and give some suggestions to strengthen the prevailing law to reduce the infant abductions.

II. METHODOLOGY

This study is conducted as a qualitative research. The key sources of the research are the Penal Code (Amendment), No. 16 of 2006, The Child Adoption Ordinance No. 24 of 1941 and Convention on Rights of Child, 1989. This research intends to analyses the contemporary national laws and relevant documentary sources from books and websites relating to this area. Further, the study has extensively examined the decided

case laws of national and international arena and have been analysed, compared and criticized.

III. LITERATURE REVIEW

As per the research findings, there have only been few researches on the topic of abduction infants for the illegal adoption in Sri Lanka. But, there are more researches that are conducted in the international level in coordination with the National Centre for Missing & Exploited Children (NCMEC) and they have tied up how an infant abduction can be happened and what are would be good preventing methods to reduce this offence.

The research "An Analysis of Infant Abductions", which was conducted by NCMEC and university of Pennsylvania School of Nursing, is focused on the abduction of infants (through 6months age) by non-family members. According to findings of that research, most of the infant abduction cases happened in the hospitals or health care facility centres in urban areas and those infants were taken from the mother's room with or without help of the hospital staff. In some cases the abductors have acted as university medical students or hospital staff and above all some abductions are directly done by the hospital staff. Home was the other location where the infant abductions could take place. According to their findings, often the abductors would respond to an advertisement placed in the newspaper by the family for a baby sitter or act as an extension of servicers offered by the health care facility. Small number of infant abduction involved from other locations such as day-care centre, shopping mall, bus station etc. This study have marked two methods as ways of which an abductor would abduct the infant. They are; where the abductor simply walk out of the health care facility or home with the infant(no attempt was made to conceal the infant) and infant was concealed under a coat or blanket or in hand-carried container such as a gym bag. Furthermore, the study shows that the gender of the infant is not usually a significant factor, but the race of the child usually match with the offender or offender's partner. Nevertheless, risk of the physical injury for the victim infant is low and most abducted infants are healthy.

"For the health care professionals"- also conducted by the NCMEC, it has suggested guidelines for the health care professionals such as comprehensive program of health care policy and procedures thorough education of teamwork by nursing personnel, parent, physicians, security and risk management personnel, complete coordination of various elements of electronic security. Furthermore it suggested that the proactive prevention

guidelines for the infant abduction such as immediately after the birth of the infant (before the mother and the infant are separated) attach identically numbered ID bands to both infant and mother prior to the removal of the newborn from the birthing room, get the footprint, take colour photograph, record the assessment along with description of the infant and those are must recorded in the infant's medical record. Further require all health care facility to wear unique uniform and must have the colour photo ID badges (name and title easily should identifiable) and that ID badged easily should be returned to the HR or issuing department immediately upon the termination and missing must be immediately reported to the security facility/ prohibiting carrying infant in the arms (transport to be via a bassinet) and prohibiting leaving an infant without direct line of sight supervision.

The book, which is "Security in the health care environment" (David H. Sells) also discussed 'Maternity Centre Security' in the chapter 11. It has mentioned that the scope of problem of infant abduction by people outside the family and use the recommended guidelines to help prevent and responds to an infant abduction (mentioned as above) etc.

Book, "Hospitals and Healthcare security" (Russell L. Colling, Tony W. York, 2010 (5th edition)) is mentioned that 'security sensitive areas' under the Chapter 20, also discusses how to develop the healthcare facilities/security to prevent the infant abduction from the hospitals.

'A study relating to the inter-country adoption in Sri Lanka', which is conducted by the Humanitarian Organization affiliated with the department of child care and probation, mentioned that the most of the illegal adoptions take place through the inter-country adoption. Foreigners pay large amount of money directly to the biological parents or through a third party. As it has mentioned, there were many suggestions introduced by the ministers to minimize this problem, but unfortunately after the government change it was not established. The findings show that the responsible government officers or biological parents directly associated to this illegal adoption as they could find a large amount of money. Finally they have proposed some suggestions to prevent illegal inter-country adoption.

Rather than the research studies on this particular subject, the newspapers and websites report mostly the unreported cases on the abduction of infants for illegal adoption. In the newspaper articles of 'The Island' and 'Sunday observer' reported incidents where the infants

have been abducted from the lawful custody of their parents and such acts most probably happens in hospitals or health care centres. There are lot of international cases regarding this issue, which were referred in the websites, especially in ['http://www.amfor.net/StolenBabies.html'](http://www.amfor.net/StolenBabies.html) where it has mentioned about this serious problem. In most cases, the "baby mafia" is done by women by buying the infants from the poor parents who are, in most of the times in need of money, and then sells the infant to a couple who does not have babies for a large amount of money.

In Summary, NCMEC has conducted many researches regarding the infant abduction and identify the ways that the infant abduction can be happened (basically focusing on the case laws) and they have introduced some preventing measures for this issue. However, it does not discuss on the illegal adoption on the abducted infants.

IV. ABDUCTION OF INFANTS

The illegal carrying of the new born babies from the custody of the biological parents or legal appointed guardians can be known as the "abduction of infants". S.353 of the Penal Code of Sri Lanka give the definition for the word of "abduction" as, 'whoever by force compels, or by any deceitful means, or by abuse of authority or any other means of compulsion, induces any person to go from any place, is defined to abduct that person'.

There are three types of abduction that can take place. One of them is abduction for illegal adoption. Abduction can be done by a member of the infant's family or by strangers. If the abduction is done by the infant's family member, most probably it is not with an intention for an illegal adoption of the child as their own. But where the abduction is done by strangers it could be with the intention to rear the infant as their own or to sell to a forthcoming adoptive parent for illegal adoption.

As reported in the newspaper article in 'Sunday Observer' (by Sampath Jayasingneh, 20.01.2008), there was a case, where the new born infant was abducted in broad daytime from the Kalubowila hospital. A mother who gave birth to a child at the hospital was sharply removed by another woman with the help of a hospital employee and a janitor at the hospital. In that incident, the suspected woman has posted as a visitor and pretended to be the mother of the newborn infant boy and then stated that her child was being kept in the baby room and have tried to be friendly with the victim's mother. Miserably, the victim's mother had handed her infant boy over to her in order to go to the bathroom at around 2.30 p.m., when she returned, child was reported missing.

The other famous incident was the 'Baby 81' incident which was reported as the dispute with regard to the identity of the parent about the baby who survived 2004 Tsunami disaster. In this incident, no one abducted the infant, but there were nine couples who were reported to have said that the four months old child was theirs. Then the court ordered to do a DNA tests of the couples' and the infant's in order to resolve the problem. Luckily they had found the real parents.

Likewise, there are number of cases that have been reported in Sri Lanka and most of the infants are abducted from the hospitals or health care centres. But in the rural area it can happen at home due to parent's incapacity to provide a good security for their infants.

However, Penal Code is the only source to punish the offenders of the abductors. As it is finally amended by the Act No. 16 of 2006, it is specify the offences committed on the children and the abduction is also discussed under the Section 353- 360A. But there is no any specific provision to punish offenders who are liable for the infant abduction. But court has punished the infant abductors under the Section 354 of the Penal Code, Sri Lanka, which is the punishment of kidnapping, because abduction of infant can be also considered as a kidnapping. According to the Section 350(Penal code, Sri Lanka), there are two kinds of kidnapping which are,

1. Kidnapping from Ceylon
2. Kidnapping from lawful guardianship

Infant abduction can be categorized under the second part which is the kidnapping from the lawful guardianship which means "whoever takes or entices any minor under fourteen years of age if male, or under sixteen years of age if a female, or any person of unsound mind, out of keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian" (S. 352 Penal Code, SL).

As in the explanation of the same section, the word "lawful guardianship" can be included any person lawfully entrusted with the care or custody of such minor or other person.

Furthermore, in the book of "Offences under the Penal Code of Sri Lanka" (Prof. G.L.Peiris, 2009) has compared the differences between kidnapping from lawful guardianship and abduction as;

- i. Only three specified categories of persons (mentioned above) may be victimized of the former offence, while any person at all may be abducted

- ii. The former is essentially an offence against guardianship while, no need to be guardian for the abduction
- iii. The relevant consent from the lawful guardian in the former case and that of the victim in the latter
- iv. Abduction (unlike kidnapping) involves as a constituent the use of compulsion, deception or force.

Therefore, the offender of the infant abduction can be liable under this kidnapping section, because the nature of the infant abduction would be kidnapping as mentioned in the above section and that person, who is liable for this offence, will be punished under the Section 354 of the Penal code Sri Lanka, which shall be punished with the imprisonment of either with description for a term which may extend to seven years, and shall also be liable for a fine.

V. ILLEGAL ADOPTION

Illegal adoption is an adoption, whereby a person assumes the parenting of another child/infant from that child/infant's biological parents permanently, which is done in violation of the adoption laws. Illegal adoption may result for abuses such as: abduction or the sale of children, traffic of children, and other illegal or illicit activities against children (US Legal Definition, USLEGAL.COM).

In the illegal adoption requires the exorbitant amount of money be paid directly to the birth mother or to a third party. In this study, it is basically focused on illegal adoption that happens through abduction of infants. Where stranger abducts the infant and made false birth certificate by his/her own or third party who is going to adopt the infant illegally who is not the legal guardian of the infant at all.

In Sri Lankan, where the adoption is done according to the Adoption Ordinance of Sri Lanka, is known as "legal adoption". There must have a court Order to adopt the child or infant. But, where there is an adoption which infringes the Adoption Ordinance procedures, it can be considered as an illegal adoption and the offender will be liable under the S.354 of the Penal code Sri Lanka.

In some instances, in Sri Lanka, some court proceedings or department of child care and probation take a long time to give child in adoption and thus parents try to do the illegal adoption with paying large amount of money to the biological parent directly or through a third party, since it saves time. Sometimes, where a newborn baby born to a woman sex worker (prostitutes) or unmarried

couple, it is sold to another person to adopt the infant which is also illegal.

VI. LEGAL SITUATION ON ADOPTION LAWS IN SRI LANKA.

Orphans or children, whose parents are poor to support or feed their children, can be assigned to be adopted by the department of child care and probation under the Adoption Ordinance No 24 of 1941 in Sri Lanka with the Court Order for the best interest and the welfare of the child and protect the child's welfare and security as well. *Mc Call v. Mc Call* (1994 (3) SA 201 (c)) laid that the Best Interest of the Child is better able to promote and ensure child's physical, moral, emotional and spiritual welfare, because the children's beings are not considered as the parent's private matters alone. Therefore, where the parental care is in doubt, the state will intervene as the upper guardian of all minors.

As mentioned in the Adoption Ordinance No.24 of 1941 in Sri Lanka, any person who assumes the parenting of another child/infant must have the adoption order which is issued by the District Court and that order should be registered at the Registrar General's Department. No adoption order shall be made authorizing two or more persons to adopt a child (section 2)

Any married couple can adopt a child as they wish and that adopting parents should be on or below 60 years, because this adopting parents must be able to bring up a child. The young married couple should declare a medical report from a doctor that they cannot conceive a baby. The adopted parents should also declare their monthly income, which should be sufficient to provide the child education and other needs, because they must have a position to bring up a child.

S.3 of the Adoption Ordinance gives the restriction on making of adoption orders, as; the applicant is under the age 25 years and the age gap between the applicant and the adoptee child is less than 21 years. No applicant will apply if the child concerned is a descendant of the applicant or his/her brother/sister or any of their married parents. No adoption order shall be made where the sole applicant is a male and the adoptee child is a female, unless if the court satisfied under special circumstances which justify the making of an adoption order. Adoptee child should be below 14 years of age and if the adoptee child is over 10 years old, that child's consent is required. No applicant is made in favour of any foreign applicant, because they must give priority to the applicant who is a citizen of Sri Lanka and resident or domicile in Sri Lanka.

Under the Adoption Ordinance, the birth of the adoptee child can be re-registered. According to my view, in some circumstances, it is no need to have consent of the biological parents to adopt the child or infant; where the person or legally married couple provide education, security, maintenance for that adoptee child at least within 2years period of time/ where the natural parents or legal guardian is missing or mentally incapacity/ biological parents hard to give support or protection to that child (if the court satisfy). It is difficult to mention the specific time period that is to fulfil the adoption procedure, because it can differ under the circumstances (amount of the applicants/ children).

Convention on the Rights of the Child (CRC), which was adopted and opened for signature, ratification and accession by the General assembly resolution 44/25 on 1989 and entered in to force on 1990, recognizes the child rights such as; inherent right to life, survival and development of the child, right to name and nationality at birth, right to know about parents and their care, right to education etc.

Article 21 of CRC mentioned that the adoption system shall ensure the best interests of the child. Basically it is discuss about the inter-country adoption which is authorized only by competent authorities who determine in accordance with the applicable laws and procedures, and that adoption is permissible in view of child's status concerning the parents/relatives or legal guardians, if required, the person have their informed consent to adoption on the basis such counselling as may be necessary; inter-country adoption may be considered as an alternative means of child care, if the child cannot be placed an adoptive family in the child's country of origin; ensure that the adoptee child enjoys safeguards and standards equivalent to those existing in the case of national adoption; inter-country adoption does not result in improper financial gain for those involved in it; ensure that the placement of the child in another country is carried out by competent authorities or organs.

VI. LOOPHOLES IN THE LAW

Sri Lanka is facing this problem of abduction of infants for the illegal adoption for the last couple of decades. Usually the punishment is not enough to the offence done. As well as under the slow process of law, the punishment of such individuals are delayed.

Even though there are laws which is mentioned in the Penal code, to curb kidnapping of infants, unfortunately, certain hospitals do not have adequate regulations to prevent such issues which is taking place within their premises.

Moreover, no specific provisions being granted to punish the government officers or staff who breaches their responsibility crookedly or negligently regarding the infant abduction from the hospitals or help to create a fake identity card of the parents and re-registered baby falsely.

In my point of view, there is no any legal provisions to protect the victims, though the adoption law gives priority to the best interest of child. It is not clear about the legal situation to protect the parents who will be going in search of legal remedies whose children have been abducted.

The legal fees are so high that people suffering from poverty would not be able to seek legal assistance.

There was no legal aid given to such individuals, because most of the parents, whose child has been abducted, does not seek any legal assistance as the fees of the lawyers are exorbitant.

The legal provision is not fair as teenagers between the ages of 16 to 18 years are allowed to have a sexual intercourse, but they cannot marry till they are 18 years of age.

Government officers in Probation department or police or hospital staff have lack of knowledge regarding the legal background of the adoption law and the crime of kidnapping as well as the modern technology.

According to my findings, there are around more individuals (than 1200) in the probation list waiting to adopt children legally. But probation receives few children per year. As a result of the individuals try to adopt the infant or child illegally and women, who conceive baby before marriage or who act as a sex worker, always try to expose their identity and they secretly give that baby for illegal adoption.

VII.RECOMMENDATIONS

The current legal provisions safeguarding children from abduction and kidnapping, should be implemented fully and must give sever punishments or capital punishment to the offenders.

Give punishments to the offenders without taking much times.

Implement specific punishments and remove them from the government services to the government officers or staff who breached their responsibilities.

The officers who involve in investigation into kidnapping and illegally adopting children, should study the legal provisions on adoption.

Authorities should consider introducing the DNA test to identify the biological parents of the abducted or kidnapped infants.

Government should introduce free legal aid centres for poor victims to seek the legal aid for the criminal matters.

As referred in the above research which was conducted by NCMEC, I would also recommend the following suggestions to be adopted to prevent abduction of infants from the hospitals. Therefore, introduce adequate regulations to prevent such crimes and immediate reporting and investigation by law enforcement is necessary for the safe return of the infant because hospital staff and the management of the facility must response for the infant abduction. Every hospital or health care centre must develop their technologies.

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