

TRACKING THE TRENDS OF PARENTAL CHILD ABDUCTION: A LITERATURE REVIEW

NAHEED SULTAN¹

DATO' SRI DR. ZALEHA KAMARUDIN²

Parental child abduction (PCA) is a very complex issue that remains unresolved until today. The purpose of this literature review is to analyse important literatures relating to PCA at global level using studies that had been conducted over four decades. Structurally, this paper is divided into four sub-sections: (a) seriousness and size of the issue at global level, (b) factors that lead to PCA, (c) effects of PCA, and (d) PCA issues in Muslim countries. These different aspects of the relevant literatures are closely examined to understand their contributions and relationships, as well as, to identify some focal gaps for future research.

Introduction

Parental child abduction (PCA) is often described as an utmost challenging phenomenon which is the result of globalisation. It occurs when one parent intentionally denies the other parent's access to a child. It may happen immediately after divorce or years after the divorce, consequently resulting in parental stress due to custody issues.¹

Worldwide statistics showed that the size of PCA has increased steeply due to failure in intercultural and international marriages. These cases are bound to increase further as national boundaries weaken, and travelling is made more and easier. Furthermore, PCA became more complicated when a parent takes a child and moves out of the country, to another country with different national

1 PhD Candidate, Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, Kuala Lumpur, Malaysia, Email:

2 Professor of Law, International Institute of Islamic Thought and Civilisation, International Islamic University Malaysia, Kuala Lumpur, Malaysia; Former Rector of International Islamic University Malaysia; Former Judge of the Syariah Court of Appeal Terengganu, Kuala Terengganu, Malaysia; Member, OIC Women Consultative Council, Email: drzaleha@iiu.edu.my

laws, and stereotypical views that can legally interfere and prolong the whole process.²

TRACKING TRENDS

This section is categorised into four sub-sections representing the patterns found after reviewing relevant literatures. These include (a) seriousness and size of the issue at global level over four decades, (b) factors that lead to PCA, (c) effects of PCA, and lastly (d) PCA issues in Muslim countries. These different aspects of the relevant literatures are closely examined to understand their contributions and relationships, as well as, to identify some focal gaps for future research.

Seriousness and Size of the Issue

In the era of globalisation, PCA has become a serious concern for researchers and relevant authorities. This area of research has attracted a good number of researchers since the 1980s until 1990s, such as Abrahms (1983); Finkelhor, Hotaling et al. (1990-1991); Greif, G.L., Hegar, R.L. (1992); Grief and Hegar (1993); but since 2000, there have been a few scholarly additions to literatures in this area. However, we are fortunate to have Chiancone, J (2000); Chiancone, J (2001); Miller, Mitchell, Megan Kurlycheck, et al. (2009); Anil Malhotra (2010); Julia Claire Shear Kushner (2013) and Dahl (2017) that have continued adding the current chain of literatures in this area that paved the way for effective solutions.

Their findings also prompted initiatives for the enactment of specific laws to prevent further child abductions. This is done mainly by looking at ways in deterring collateral attacks on child custody orders, identifying abduction-risk factors, and providing for abduction-risk prevention orders. These findings further motivated other researchers to explore factors which are grounds for child abduction, parental separation or divorce, and child custody/visitation rights. The aforementioned usually play a prominent role in taking a child away from the other parent that can cause extensive emotional trauma to both the left-behind parent and the children.³

Tracking the Trends of Parental Child Abduction: A Literature Review / 175

Janvier, McCormick's et al. data (1990), drawn from a survey of sixty-five (65) left-behind parents nationwide, showed a difference between international and local cases. Further studies by Hegar, R. L., & Grief, G. L. (1991); Hegar, R. L., & Grief, G. L. (1994), confirmed that immediately after divorce or separation, parents are mostly overcome with feelings that their children may be abducted by the other parent.

Broman, C. L., Riba, M. L., et al. (1996), added that the international character of one of the parents is the key factor and constituted the higher risk for the abduction of children. P. Finkelhor, D., et al. (1997) stated that the second riskiest factor were the cultural differences. Cases of PCA took place mostly after the separation of the parents, yet before the issuance of the divorce order.⁴ Chinacoin and Girdner's (2000), also confirmed that due to cross-cultural and international marriage, PCA has a higher rate of occurrence.⁵

Data from a study by Carmody, D. C., and Plass, P. S. (2000) indicated that child abduction by a parent is up to six times more frequent than previous estimates. Relative to PCA, abductions by strangers occur on a very occasional basis. While much attention has been placed on prevention programmes for abductions by strangers, prevention programmes for PCA, unfortunately, have been non-existent.⁶ The aforementioned study further added that two-thirds of international PCA cases involved mothers who are often the victims of domestic violence. When there is an agreement for the return of a child, the court may be reluctant to return the child, if ordering so could result in the permanent separation of the child from their primary caregiver. This could occur if the abducting parent faced criminal prosecution or deportation by returning to the child's home country.

Boudreaux, M. C., Lord, W.D., et al., (2000), observed that sometimes children were taken on an unproven vacation to a foreign country and were not returned. PCA may also take place either within the same country or across the borders, and the study also revealed that one-fifth of the number of PCA involved children who were abducted to other countries by their parents or any

other family member. At times, this figure is at an alarming forty per cent (40%) and sometimes even higher. Chiancone, J., Girdner, L., et al. (2001), explicated that when parents separate or begin divorce proceedings, PCA often occurs at this point. One situation is when a parent may remove or retain the child from the other for seeking to gain a lead in the expected or pending child-custody proceedings. Further, the situation is also mostly the same whenever a parent fears losing the child in the expected or pending child-custody proceedings. Gosslain, C. (2002) added that another situation may exist when a parent refused to return a child at the end of an access visit or may escape with the child to prevent an access visit or may do so in fear of domestic violence and abuse.⁷

To show the seriousness and size of the PCA cases, the most comprehensive examination of the extent of PCA is the National Incidence Studies on Missing, Abducted, Runaway, and Thrown-away Children in America (NISMAART) 1 and supported by NISMAART 2. According to these reports, an estimated 203,900 children were victims of a family abduction from 1990 to 1999. Among these, 117,200 were missing from their caretakers, and, of these, an estimated 56,500 were reported to authorities for assistance in locating the children. Forty-three per cent (43%) of the children who were victims of family abduction were not considered missing by them. It is because they thought that a child can be abducted but not necessarily missing, as in cases where a child is abducted by a non-custodial father or non-custodial mother. Sometimes, the child is taken to the parents' home in different State where the address is well known to the left-behind parent, but the abductor parent refused to return the child. Findings showed that family abduction is a type of crime and limited statistical information is available related to child welfare problem.⁸

Hammer and Nancy B. (2003), observed that although many children were abducted by a family member, people mostly do not fully understand this issue and generally view these incidents as infrequent and a minor issue, which should be handled

privately.⁹ Research by Ericka A. Schnitzer-Reese (2004), indicated that abduction by a parent is a crime and a frightening reality which mostly destroys the abducted child's sense of security and happiness. In this study, PCA is considered a crime but, in many countries, it goes unchecked and unpunished. These abductions emerged because of various conditions, which usually involved clashes of cultural, religious, and social norms, especially when parents were of different nationalities. Laws of every State and country are different regarding PCA. It becomes difficult to provide justice to the left-behind parent because of that country's different legal system, religious practices, and traditions. This study also showed that when a child is abducted, it involves both civil and criminal law, but when a child is abducted by a parent then it is mostly treated as a civil matter.¹⁰

Studies by Schoen, R. & Canudas-Romo (2006), and Nigel Lowe and Victoria Stephens, (2008), using global statistical report on international PCA showed that the rates are forty-four per cent (44%) under the Hague Convention applications between 2003 and 2008. The findings of this report showed a total of 2705 applications in 2008, which were lower than the actual number of children moved across the borders by one of their parents or family members. As not all abduction cases were resolved under the Hague Convention and the figure of abductions within the State boundaries were also not included, therefore, the report stated that figure showing PCA is predicted to be higher.¹¹

Analysis of various researches by several scholars such as Michael R. Walsh, Susan Savard (2006); Nicholas Long, Rex Forehand, et al (2009), found that the number of cases of international PCA cases were smaller in comparison to domestic cases. However, they are often the most difficult to resolve due to the involvement of conflicting international jurisdictions.¹²

Gibbs, Mary Jo L. (2009), showed that as international relationships become more common, so do cases of international PCA. Similarly, separation or divorce is on the rise and has tripled in recent years which mean custody battles are also increasing. Millions of children experienced parental divorce each year and

these battles of custody issues between parents put the children at risk of being abducted by one of the parents. Moreover, when a child is abducted after divorce then it interrupts the process of custody decisions and made it difficult for the court to arrive to any conclusion.¹³

A leading international NGO, REUNITE, stated that there is a one hundred and sixty-four per cent (164%) increase in the number of abduction cases between 1995 and 2010.¹⁴ Durkin, M. (2010), illuminated that PCA is a troubling and emotionally devastating event, whether the wrongdoer remained within the country or escaped with the children to a foreign nation.

Studies by Douzenis, A., Koutoungelos, et al (2012), revealed that apart from the increasing number of abductions of children across the borders, the forms of parental abduction are also changing and seem to reflect more shifts in society. Fathers used to be the main abductors in the past (1970's and early 1980's). They abducted their child to their country just to control the upbringing of the child in their own culture. Moreover, the fear of losing the child and father relationship due to limited contact with child, because of being the non-custodial parent, is another factor why father became the main abductor.¹⁵

Leslie Ellen Shear and Julia C. Shear Kushner (2013); Donna Martinson and Melissa Gregg (2014), also concurred that the nature of the abduction has changed as opposed to the moment when it was first raised in the 1970s. Now, the issue of international PCA has received increased media attention both locally and worldwide due to the increasing number of children abducted across the borders by one of the parents or any family member.¹⁶

A European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), Committee Report (2015), further supported those thousands of children being abducted from the United States to countries abroad yearly. As a result, the rights of thousands of parents were being violated. With the emergence of social media, easier immigration process and communication technology, people connect across the world conveniently. These factors have exacerbated the problems associated with PCA.¹⁷

Tracking the Trends of Parental Child Abduction: A Literature Review / 179

New data by Pahrand, M. (2017), and Gibbs, Mary Jo, L. (2019), added that the size of PCA is continuously increasing mainly because of the conflicts within the family such as domestic violence and child abuse which were forcefully committed on family members by another family member. Usually, child abuse and domestic violence became lesser after divorce because the family members who have grudges with each other were no longer in contact daily. However, these are considered as a criminal offence including families in which divorce has an inverse effect such as in PCA cases.¹⁸

Further review of the statistics by Botica, Z. (2017), showed that abduction of children to a non-Hague Convention country was on the rise between the years 1995 to 1997. The number rose to two hundred (200) children per year who were abducted to another country. Australia also witnessed an increase in children abduction out of and within Australia, which involved different countries including non-Hague Convention countries. This showed that PCA is a serious issue which is affecting everyone including Muslim countries worldwide.¹⁹

Annual report on international PCA by Department of State, United States of America (2019), also revealed that a major struggle arises when a child is abducted to a non-signatory nation because the Convention becomes unavailable to seek the return of an abducted child. The parent is then forced to litigate custody determinations in a foreign country where there is no obligation on foreign courts to afford similar rights to the parties as those outlined within the Convention. Instead, the foreign court must decide how to balance the child's interests with the international stance to combat the unlawful removal or non-return of children abroad.²⁰

Factors Leading to PCA

Research findings indicated that many abductors shared common characteristics, such as: having low socio-economic status, job issues and had a very stressful life. Many abductors had prior criminal arrest records and combinations of these social factors were found

to increase the risk of PCA.²¹

It is interesting to note that, Agopian, (1981); Agopian, M.W. (1984); Kiser, M.A. (1987), in their studies, found that some parents abducted their child or children from the other parent just to continue contact with them or to force them for any settlement. They may also abduct the child just to show his/her power and to punish, blame, or take revenge from the other parent.²² Additionally, Kiser (1987); Sagatun and Barrett (1990); Janvier, McCormick, and Donaldson (1990); Blomquist (1992), have also identified that abducting parents, mostly fathers, may fear losing legal custody or visitation rights after divorce, therefore, abducted their child or children to get the custody and this could be their main motivation for abduction.²³ In many extreme cases, abductor's paranoid delusions and personality disorders could be the reason to abduct their child or total disregard for the law.²⁴

Barton, Brooks (1993); Greif and Hegar (1993), found that about seventy-five per cent (75%) of male abductors and twenty-five per cent (25%) of female abductors had shown violent behaviour in the past. Johnston, (1994), further added that domestic violence was another factor in almost all the reported cases of PCA.²⁵

Johnston (1994); Hegar and Greif (1994), in their study also found that rates of foreign abduction were higher for racially or ethnically intermarried abductors. Internationalisation of relationships and cross-cultural marriages were also cited as reasons for PCA. Further, they also found that if the abductor had no financial or emotional ties to the geographic area from where the child was abducted and has strong ties to their own home country and has strong support system from family and friends there, then the chances are that he will take the child to his own country of origin.²⁶

Plass, Finkelhor, and Hotaling (1997) using data drawn from NISMART's national sample to identify demographic and family characteristics found that history of violence between adults in the household and lack of co-operation and marital instability with the other parent may put the child at risk of parental

abduction. In some cases, parents abducted their child to protect it from the other parent who neglected or perceived to have molested or abused the child.²⁷

Chiancone and Girdner's (2000), also showed higher rates of cross-cultural and international marriage in their study as reasons of international abductions.²⁸ The issue of PCA stemmed from conflict within the family relationship. This has been confirmed by many researchers, such as Chiancone, J., et al. (2001); Harold and Murch (2005); Douzenis, A. Koutoangelos, et al. (2012), that it might be rooted in religious or cultural differences. Further, dissolution of marriage is also a reason, as it has been established that marriages dissolve much more frequently in recent years than in the past.²⁹ These upward trends showed that dissolution of mixed-ethnicity marriages has additional burden due to cultural and national differences.

Effects of PCA

Agopian (1984), found that the abducted child can be emotionally affected if kept away from the left-behind parent for a longer period and may have trust and attachment issues. He also added that the children, when separated from family friends and relatives, developed anxiety, depression and sense of isolation. Further, as a result the child may develop an unhealthy bond with the parent who has abducted the child. Forehand et al.(1989); Finkelhor, Hotaling, and Sedlak, (1990); Janvier, McCormick, and Donaldson (1990); Greif and Hegar (1991); Hatcher, Barton, and Brooks (1993); Thoits, P. A. (1995), explicated that PCA can be distressing experience for both left-behind parents and the children. Left-behind parents experienced feelings of loss, rage, and impaired sleep along with severe depression. It can be a more damaging and traumatic experience when force is used to abduct the child. Even after recovering their abducted children, parent's level of psychological disturbance, stress and trauma does not end. In fact, in most cases, it gets higher even after reunification, mainly because seventy-five per cent (75%) of the left-behind parents mostly fear of re-abduction of their child.³⁰

The cost of searching for an abducted child is very high. More than half of the parents spend their annual salaries in finding and recovering their abducted child. These factors can cause a devastating effect on the left-behind parent's overall health and may increase their anxiety level and depression.³¹

Studies by Chiancone and Girdner, (2000); Hammer, et al. (2002); Greif (2003); found that the abduction experience, particularly when combined with a divorce or some other trauma, has the potential for significantly affecting normal development. It affected various age group at different intensity. Even when they are recovered or returned, they will suffer post-traumatic effects and fear re-abduction and may have psychological problems. Children struggled to be normal again, but it may take ages to heal from the wounds of abduction.

Freeman, M. (2006), observed that children whose ages were five or above were more affected than children who were younger. She further added that younger children adjusted easily to any situation if their basic requirements were satisfied, but older children were more affected by it because they mostly blamed themselves for the divorce. The impression of being rejected made the children depressed.³²

Anis (2015), also found that most younger children were abducted by their parents and constant moving made them vulnerable, their identities were changed and by not giving them proper medical care would affect their health as well. As every child is different and so is their style to deal with the situation and every child reacted in a different way when they were abducted.³³

Harp, Caren (2018), and Naheed Sultan (2018) confirmed that the children abducted across the borders can have serious physical, psychological and emotional consequences because the children can be devastated, shocked, and stressed by differences in languages, custom and culture when they are kept wrongfully in a new environment. It took a lot of courage and strength to heal from these effects and wounds. All the studies showed that abduction caused deep physical, psychological, and mental scars

on everyone associated especially the children and left-behind parents.³⁴

PCA in Muslim Countries

Islamic literature Al-Nawawi (1914), Hassan, Farooq. A. (1982), Zaydan (1985), Abdullah Ahmed An-Na'im, A. A. (1990), Al-Ashqar (1991), highlighted some rules in Islam regarding custody of children which is generally known as *Hadanah*. In determining custody and visiting rights after divorce, the best interest of the child has been the main consideration under Islamic law. After the dissolution of marriage, according to most of the jurists, a girl will be in the custody of her mother till the age of puberty and a boy till the age of seven years. After attaining this certain age, the children are then allowed to choose to which his or her parents they want to live with if each one of their parents is not mad or infidel. It is highlighted in these studies that Islamic norms may have a greater influence on the psychological level as compared to the formal/legal level. The religious status of the parties should not be side-lined or undermined just because the State is not declared as such under the Constitution or whether it follows the *Shari'ah* law.³⁵

Abdullah Ahmed An-Na'im (1996), added that in Muslim countries where *Shari'ah* is believed to be divine law, it is an important part of one's identity to be acknowledged as a Muslim. It depicted no difference between secular and religious or between private and public facets of Muslim's life. He highlighted challenges that arise in countries with clashes of cultural, religious, and social norms where child custody laws are based upon *Shari'ah* law and Islamic social and religious values. Many more Muslim countries followed the same pattern, so, the Hague Convention, becomes purposeless in a situation where the child is abducted to a country which is not a party to it.³⁶

Anis and Noor 'Aza (2010); Gregg, D. M (2014), confirmed that there are countries which are not parties to any of the above international and the prospects for recovery of abducted children may be bleak. A left-behind parent has very few options in such

cases especially in a country where he or she does not speak the language, where legal aid is not available, and where the domestic law militates against the possibilities of the child's return. Also, the constant moving of places makes the children insecure, tired, and frustrated.³⁷

Denielle, M. A. (2000); Linda Silberman (2000); Hammer, H., et al.(2002), in their study found that under the *Shari'ah* law, a child is considered a Muslim if he or she is born to a Muslim mother or father. Therefore, in cases where the non-Muslim mother wanted to have custody of her child from a Muslim father in a Muslim country, then the child's best interest is to be raised as a Muslim. Among the nine hundred and four (904) unresolved (U.S) cases of international PCA, twenty-five per cent (25%) involved countries whose legal system is based on *Shari'ah* Law. The Hague Convention is the only body which deals with PCA. Cases of children abducted internationally, but it has its problems too, such as when dealing with Muslim countries.³⁸

It is interesting to note that studies such as Ali Awad Eigeed, Mohammad Ahmed Mohamed (2006); Aiyar, Smita (2007), revealed further that most Muslim countries believed *Shari'ah* to be the divine law and follows it when issues of marriage, divorce or custody of children arise. They further added that the Hague Convention is an effective way to protect children from the consequences of PCA. However, its limited signatories have impacted its application— particularly in cases concerning non-Convention countries. From an Islamic point of view, abduction denotes an ill-motivated child removal by the parent or retention of the child to seize from the other parent the right of access or custody. PCA as such is unknown to Islamic legal literature but other phrases such as '*Al Safar bi al mahdoon*' (taking the child in custody abroad) or '*tasfeer*' (sending the child abroad) and *Nuqla* (permanent child relocation) are mentioned.³⁹ Aiyar, Smita (2007), further highlighted that the abductors can take advantage of being a member of the country which is not a party to the Hague Convention. Although U.K House of Lords decided to apply "best interest of child" principle to all non-Hague cases instead of

Tracking the Trends of Parental Child Abduction: A Literature Review / 185

Convention principles, U.S courts are still not able to resolve the non-Convention cases.⁴⁰

Further studies by Malhotra (2010); Kruger, T. (2011); Bozin-Odhiambo, Danielle (2012), observed that abduction of a child by their father mostly flourished in countries that have not signed the Hague Convention. These are mainly Muslim majority countries where fathers are considered the natural guardian of the child and abduction of a child by a father is not considered a crime. So, these countries are considered a haven for fathers to abduct their child or children. PCA cases became more complicated when the children are abducted to these countries, which are not signatory to the Hague Convention.⁴¹

Suzana and Shamsudin (2012), revealed that it is difficult to navigate a child especially when the child is abducted by his Muslim father to a non-Hague country with *Shari'ah*-based family laws.⁴²

Research by Douzenis, A., et al. (2012), explicated that the best interest of the child should follow Article 3 (1) of the United Nations Convention on the Rights of the Child (UNCRC). It stated that the best interest of the child should be the primary consideration when commenced by public or private institutions, courts of law, any administrative authorities, or legislative bodies in all their actions regarding children.⁴³

Shear, L.E. & Shear Kushner, J.C. (2013); Freeman, Marilyn (2014), found that the Hague Convention is considered as a useful instrument to deal with abduction cases and has succeeded in cases among the countries which are signatory to it. Extra efforts therefore, should be made to encourage more countries to become a member of the Hague Convention on Civil Aspects of International Child Abduction Convention 1980 because they are out of reach of the Hague Convention.⁴⁴

As highlighted by Zaleha Kamaruddin (2014), PCA which is widespread in today's world was not a huge problem back then. To resolve today's problems, PCA should be looked into more seriously. Ibrahim Ahmed Fekry (2015), suggested that PCA should be made a crime and failing to identify it as wrongdoing and

inability to carry out punishments for such acts will further complicate and prolong the problem.⁴⁵

CONCLUSION

Literature reviews have shown that even though the three Hague Children's Conventions were successfully adopted, most of the Muslim countries are not yet parties to it. This is the primary reason why the HCCH has come up with a plan of encouraging Muslim countries to a process, known as the Malta Process.⁴⁶ For the international safety of children and the resolution of multifaceted, cross-border, family battles, the Malta Process encourages cooperation with countries with legal systems influenced by or based upon *Shari'ah* law.⁴⁷ So far, this seems to be the best way forward.

Notes

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