

Kidnapping And Trafficking Of Newborns: (Breaking The Family's Spirit, Severe Legal Penalties, Necessary Precautions, And Sharia-Based Perspectives)

Prof. Dr. MOHAMMED ABDULLAH THABIT SHABALA

H (Principal Investigator), Department of Sharia, College of Sharia, Najran University, Kingdom of Saudi Arabia.

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Research Abstract:

The kidnapping and trafficking of newborns from hospitals represent one of the most dangerous crimes punishable by law. From the perspective of Islamic Sharia, such criminals are considered among the perpetrators of *ḥirābah* (armed robbery or waging war against society), and they are subject to severe discretionary (*ta'zīrī*) punishments, which may reach the level of execution and beheading, depending on the rulings established by Islamic judicial authorities. There is no doubt that such a heinous crime is highly deserving of these severe discretionary penalties.

Smuggling gangs around the world employ various devious methods to carry out their crimes, such as offering bribes to morally weak employees—both male and female—working in public and private maternity hospitals. They often exploit the negligence of those supervising newborns, and they may use force, swiftness, cunning, or even threats with weapons to achieve their malicious goals.

The research aimed to achieve several objectives, the most important of which are:

1. Providing Sharia-based answers to public inquiries regarding the phenomenon of newborn kidnapping and trafficking.
2. Compiling a set of scattered rulings and regulations related to this topic in one comprehensive study.
3. Demonstrating the ability of Islamic Sharia to offer appropriate solutions for emerging contemporary issues in people's lives.

This study concluded with a number of findings and recommendations, which are presented at the end of the paper.

Keywords: Kidnapping – Trafficking – Family – Newborns

INTRODUCTION:

The phenomenon of newborn kidnapping has given rise to numerous issues and concerns.

Research Problem and Questions:

This study seeks to answer a fundamental and central question: What is meant by the kidnapping and trafficking of newborns?

From this principal question, several related inquiries that are directly connected to the topic branch flare up.

Reasons for Choosing the Topic:

The reasons for selecting this topic can be summarized in two main points:

1. A strong desire to document and examine a number of rulings and regulations related to the phenomenon of newborn abduction from hospitals and their trafficking to suspicious and unknown destinations.
2. The frequent public inquiries concerning the causes of this phenomenon and the level of necessary precautions required in both public and private hospitals.

Research Objectives:

The primary objectives of this study are as follows:

1. To support the research orientations of Najran University in the field of contemporary jurisprudential issues related to marital life and personal status.
2. To contribute, through this study, to the dissemination of rulings and penalties associated with the kidnapping and trafficking of newborns.
3. To gather in one place the various scattered issues related to this subject.
4. To demonstrate the capacity of Islamic Sharia to address societal problems in light of its authentic jurisprudential principles.

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5. First Topic: Clarification of the Terms in the Research Title
The proposed title of this research is "Kidnapping and Trafficking of Newborns", which necessitates clarifying the two terms "kidnapping" and "trafficking" from both linguistic and technical (terminological) perspectives.
6. Arabic linguistic dictionaries state that the verb *khaṭīfa* (خَطَفَ) – with a kasrah under the letter *ṭā'* (ط), on the pattern of *samī'a* (سَمِعَ) – is used to indicate that someone snatches something (*yakhtaṭīfuhu khaṭfan*), and this is the most proper usage according to classical Arabic authorities. It is also said *khaṭafa* (خَطَفَ) – with a fathah on the *ṭā'*, on the pattern of *ḍaraba* (ضَرَبَ). Both forms appear in the Noble Qur'an, as in the verse: "Except the one who snatches a fragment (of knowledge), and he is pursued by a piercing meteor." [al-Şāffāt: 10]

The verse:

"The lightning almost snatches away their vision." [al-Baqarah: 20]
The usage with the kasrah (*khaṭīfa*) is the more prevalent and widely recognized form.

7. The meaning of *khaṭf* (kidnapping/snatching) is *istilāb* (taking away by force). It has also been defined as taking something swiftly and by seizure. Some linguists hold an unusual view, suggesting that the verb *khaṭīfa* (with kasrah) implies repetition, whereas *khaṭafa* (with fathah) does not; this opinion is considered anomalous.

8. Among metaphorical usages is the expression: "The lightning snatched the sight," meaning it overwhelmed or took it away – as seen in the previously cited verse.
9. The term *khāṭif* (kidnapper/snatcher) is also used for a wolf due to the way it seizes its prey – sheep, goats, or others. In some legal texts, there is a prohibition concerning *al-khaṭfah*, referring to the limb seized by a beast of prey or cut from a living animal. Such a seized limb is considered carrion (*maytah*), since anything severed from a living animal – whether flesh or fat – assumes the ruling of dead meat and is impermissible to eat.
10. Additionally, it is said: "A camel is *khayṭaf* (خَيْطَف)," meaning it moves swiftly. *Al-khāṭūf* is a curved blade resembling a sickle, used by hunters to snatch game such as deer and the like.
The term *al-khaṭṭāf* is also used to refer to a devil or a thief.
Moreover, a sword is described as "*khāṭif* of the head," meaning it severs the head swiftly during execution – an act considered merciful to the person being punished, as it causes immediate death.

[10][21][3]

Conclusion, the Previously Mentioned Analysis Leads to Several Important Implications, Including:

1. That the root of the trilateral verb (*kha-ṭa-fa*) and its derived forms revolve around meanings associated with seizing something swiftly, snatching it in the blink of an eye, and taking it from its place or the hand of its possessor.
2. The concept of kidnapping (*khaṭf*) necessitates the presence of a kidnapper, an object being kidnapped, and someone from whom it is taken.
3. The act of kidnapping is often attributed to evil entities, such as the devil, who snatches and steals hearing, physically abducts human beings, and corrupts their religion. It also applies to thieves who rely on sleight of hand to steal people's wealth, and to wolves – though they are not morally accountable or legally burdened – when they snatch livestock from shepherds or seize it from enclosures.
4. Kidnapping is associated with speed in execution.

All of these meanings apply precisely to the evil abductors who kidnap newborns from their beds, thereby inflicting deep wounds upon their families. The act of kidnapping is typically executed swiftly in order to avoid capture by the authorities responsible for safeguarding newborns.

Given this established understanding, these linguistic implications yield a terminological definition of the term kidnapping (*khaṭf*), which may be stated as: "The act of seizing and taking something swiftly". [22]

As for trafficking (*tahreeb*), it is a verbal noun (*maṣḍar*) following the morphological pattern *tafʿīl*, and its original root verb is (*haraba*) – with a light (non-emphatic) *rāʾ* – while its intensified form is (*harraba*) – with a shaddah (stress) on the *rāʾ*.

Classical Arabic dictionaries mention under the entry (*haraba*) that one may say: "He caused someone else to flee" (*harrabahu*) through trafficking (*tahreeb*) or made him escape (*ahrabahu*) through intimidation, meaning he drove him to flee in fear and panic.

Escape (*al-hurūb*) means flight or running away. A person described as *hārib* means: one who flees. [16][8][15]

As for contemporary Arabic dictionaries, the use of the term "tahreeb" (smuggling) has become more widespread. They define smuggling as follows:

"The act of bringing in or introducing goods into a country secretly, either because the goods are prohibited or to evade paying taxes or duties imposed on them". [18][17]

Additionally, people have come to use the term "*al-hārib*" (the fugitive) to refer to one who has escaped from justice.

In conclusion, after this linguistic examination of the terms "Kidnapping" and "Trafficking," we may formulate a technical (terminological) definition for the phrase "kidnapping and trafficking of newborns" as follows:

"It is the act of seizing newborn infants from their places of care swiftly and with premeditation, and fleeing with them to suspicious locations for commercial or exploitative purposes".

Second Topic: Legal Classification of the Phenomenon of Newborn Kidnapping and Trafficking

We have referred to it as a "phenomenon" due to its widespread occurrence on a global scale; no Western or Arab country is exempt from the presence of newborn abductions. For this reason, it is necessary to investigate the causes behind this phenomenon and to enact deterrent penalties against the criminal kidnapping gangs that have spread corruption throughout the land—causing the disappearance of innocent fetuses or nursing infants, and inflicting severe psychological trauma upon mothers and families.

Legal Classification (Takyeef) of Contemporary Issues

The classification (takyeef) of any novel incident or newly emerging issue (nāzilah) requires precise juristic insight, through which the elements and essential components of the incident are identified, and its grave consequences observed. Jurists usually examine analogous issues from earlier jurisprudence precedents, seeking similarities between the two cases, reviewing the classical juristic discourse regarding the earlier issue, and utilizing it to formulate a precise and accurate classification of the contemporary nāzilah.

The jurists who specialize in contemporary nawāzil (emerging legal issues) have stated:

"The legal classification of a nāzilah depends upon attaining two matters: First: A correct understanding and complete conceptualization of the emergent issue. Second: That the examiner possesses thorough knowledge of jurisprudence rulings and legal principles — something that can only be achieved by one who meets the conditions of ijtihād (independent juristic reasoning)".

There is no doubt that the juristic classification (takyeef fiqhī) of the emergent issue is one of the most important steps in deriving its rules, because it places the incident within a precisely defined legal framework, facilitating its incorporation into a specific chapter of jurisprudence where it can be studied contextually and its ruling sought accordingly.

Takyeef is of two types: simple and compound.

- Simple takyeef: refers to cases that are clear and straightforward, where the new issue can be easily traced back to a well-established jurisprudence precedent.
- Compound takyeef: refers to cases in which the new issue cannot be easily connected to a single jurisprudence root. Rather, multiple foundational categories may apply.

In such cases — unlike in the simple type — the issue may be treated as an independent matter in its own right, viewed as being composed of multiple foundational elements. It is not to be referred back to one specific jurisprudence category as codified by earlier jurists. Therefore, it must be treated with a specialized evaluation and a specific ruling. [13]

As for understanding the incident, it is clear and evident, leaving no room for ambiguity. The act of kidnapping is an explicit seizure and a clear taking of someone who may not lawfully be taken. The newborn has no connection whatsoever to the kidnapper, who is a criminal and a complete stranger. The infant is the child of a woman who has just given birth to him, and he was beside her, enjoying her breastfeeding. Suddenly, the newborn disappears in a swift and professional manner— one that may involve individuals affiliated with the medical institution, despite their having sworn solemn and binding oaths to exert every possible effort to safeguard newborns and to avoid exposing them to any form of danger.

As for the clear and evident legal foundation under which the act of kidnapping and trafficking of newborns may fall, it lies somewhere between the crime of theft (sariqah) and the crime of ḥirābah (armed robbery or violent disorder).

Jurists have defined theft as:

"The taking of a valuable and protected property belonging to another from a secure place, by stealth". [12]

They have defined ḥirābah as:

"The emergence of a group of Muslims within Islamic lands to spread chaos, shed blood, seize wealth, violate honor, and destroy crops and progeny – thereby defying religion, morality, order, and the law". [14]

From the definitions of the crimes of theft and *ḥirābah*, the following elements are observed:

1. **The Financial Element:**

The thief secretly takes valuable and respected property from a protected place where it is safely kept. Similarly, the kidnappers of newborns and infants are driven by strong motives such as entering into negotiations with the family of the kidnapped child to extort money, threatening to kill the newborn, and sometimes exploiting the infertility of the mother or father who had only been able to conceive after a long period and costly treatments. The kidnappers and traffickers are fully aware of the parents' affection for the infant and their willingness to spend money in exchange for the return of the kidnapped child. Moreover, many kidnappers and traffickers resort to selling the organs of newborns or selling them to international networks specialized in providing children to wealthy individuals deprived of offspring. They also issue forged identity documents indicating that these newborns are abandoned or of unknown parentage, or that they were forsaken by their mothers, who were illicitly pregnant.

2. **The Protected Element (Al-Ḥirz):**

This refers to the property or wealth from secure places which thieves and robbers remove, a concept known to jurists as *al-ḥirz* (protection/security).

3. **Violation of Honor (Al-Hatk al-'Irdhi):**

This usually occurs with robbers who block roads and criminal thieves, who frequently combine theft with violation of honor. Kidnappers of newborns, young men, and young women often exploit them in illicit sexual activities.

4. **Intimidation, Frightening, and Terrorizing:**

This includes frightening travelers, terrorizing the peaceful, and the severe panic and great fear experienced by the parents and families of the newborns. It also encompasses the harm, intimidation, and fear inflicted upon the kidnapped themselves. All of this emphasizes the strong connection between the acts of kidnapping and trafficking and the crime of *ḥirābah* (waging war against society).

A reflective jurist notes that while kidnapping is related to theft insofar as it involves seizing newborns rather than money, and although the kidnappers' primary objective is extortion to obtain money, its connection to *ḥirābah* is stronger than its connection to theft. Indeed, kidnapping is a form of theft, but applying the *hadd* penalty of hand amputation to these kidnappers while leaving them alive encourages them to continue their criminal activities.

Moreover, an experienced kidnapper who loses his hands may still serve as an excellent informant for criminals to locate newborns. The amputation compels him to undergo cosmetic surgery or the fitting of prosthetic hands, which does not eliminate the root of the problem. The solution lies in applying the severe punishment of *ḥirābah* to them—a punishment so severe that it deters criminals once they realize their penalty is as stated in the Noble Qur'an verse:

"Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment". [Al-Mā'idah: 33]

The choice between the penalties of execution, crucifixion, amputation, or exile is subject to the discretion of the judicial authority. In the Kingdom of Saudi Arabia, the prevailing practice is to implement the penalty of execution for those proven guilty of kidnapping and trafficking children.

Judge Abdul Wahab bin Nasr al-Baghdadi stated:

"The penalty for *ḥirābah* is execution, crucifixion, amputation of the hand and foot from opposite sides, exile, or imprisonment, and this is entrusted to the discretion of the ruler based on what he deems sufficient for deterrence and punishment". [19]

The diverse motives of those who kidnap and traffic children revolve around selling them and exploiting their growth, stealing their organs, extracting their stem cells, forcing them into prostitution, extorting large sums of money from their families, or exploiting them in begging after amputating some of their limbs and disfiguring their bodies. All of this constitutes widespread corruption on earth, destruction of crops and progeny, warranting the implementation of the ḥudūd punishment for ḥirābah against them.

Third Topic: Conditions of Kidnapping and Trafficking of Newborns and Their Legal Rulings

The motives of those who kidnap and traffic newborns vary, and the legal ruling differs with each case depending on these motives and the condition of the kidnapped infant.

First: Threatening Kidnapping

This can be envisaged in many situations, such as the case of a creditor who suffers from the debtor's delay and refusal to repay a due debt, while the debtor is financially capable of repayment. The debtor resorts to kidnapping his own newborn child as a bargaining chip. If the creditor pays the debt, the newborn is returned, thus the exchange is achieved, the debtor receives his money, and the kidnapped infant returns safely to his parents after severe fear and great distress.

This form of kidnapping and threat is religiously forbidden (ḥarām), and delay in repaying a debt does not justify such conduct. Recovering debts has judicial avenues, and since the kidnapped infant returns safe, secure, and sound – having been preserved by the kidnapper during the kidnapping for the purpose of securing his right – this does not amount to the punishment of ḥirābah (waging war), but rather a discretionary (ta'zīrī) punishment, determined by the judicial authority.

Allowing such threatening kidnapping would blur distinctions between right and wrong, cause disorder, and amount to defiance of the authority of the ruler through such conduct.

Similarly, this is sometimes the act of an angry husband who kidnaps his infant child from his divorced wife who has custody, using the child to vex and anger her, then returns the child after calming down due to her distress. In this case, only a discretionary punishment appropriate to the judge's assessment applies.

The husband's conduct is forbidden because it instills terror in the heart of a Muslim woman who was once his wife. Good morals and noble character dictate that no harm befall spouses after divorce. The best interest of the infant requires harmony between the parents after separation.

It is necessary to: "Conduct matters between the man and his divorced wife with kindness and gentleness to agree on what benefits the infant". [5]

Second: Magical Kidnapping

This often occurs with malicious women known as nāffāthāt al-'uqad (those who blow on knots—practitioners of witchcraft) when their satanic jealousy overcomes them. They kidnap the infant of their co-wife, neighbor, or relative to cast a spell that remains with the child for life. This is a serious criminal act, one of the major grievous sins (kabā'ir), and an assault on the body that causes harm. If evidence proves her involvement in this malicious act, a lawsuit is filed against her, and the judge determines the appropriate punishment. The majority of jurists hold that the legal penalty for sorcerers and sorceresses is death as a ḥadd (fixed punishment), not ta'zīr (discretionary punishment). Some jurists opine that the punishment should be ta'zīrī if the sorcery does not result in the death of the victim, as a means of deterrence. [4][2][7][20]

Third: Ḥirābī Kidnapping

This has been previously discussed, referring to cases where organized gangs kidnap and traffic newborns. The punishment for such criminals is the ḥadd of ḥirābah (waging war against society).

Fourth: Playful Kidnapping

This occurs when the husband kidnaps his wife's infant as a joke, or when the child's sister or relative does so. It is an inappropriate and obnoxious form of joking, unbefitting such situations. The mother might suffer a sudden heart attack due to severe fright, which would constitute

involuntary manslaughter (qatl khata') requiring diyah (blood money) and kaffarah (expiation). Such joking is considered excessive, improper, and blameworthy. Al-Nawawi said: "The joking that is forbidden is that which involves excess and is persistent; it causes laughter and hardness of the heart, distracts from the remembrance of Allah and reflection on the duties of religion, often results in harm, breeds hatred, and diminishes respect and dignity". [1]

Fourth Topic: Precautionary Controls to Limit the Phenomenon of Kidnapping and Trafficking of Newborns

Due to the severity of this phenomenon, it is necessary – both legally and religiously – to take the necessary precautions and preventive measures that keep these criminal kidnappers and traffickers away from innocent newborn infants. These include:

1. The presence of security and supervisory authorities responsible for maintaining security, deterring offenders, and identifying intruders at maternity hospitals.
2. Installing surveillance cameras focused on the cribs in private rooms for newborns.
3. Placing electronic bracelets on the wrists of newborns that emit alerts to parents, nurses, and security authorities if suspicious movement occurs.
4. Rotating the responsibility of guarding the infant among family members.

All these measures fall under taking precautionary means, and preserving the physical integrity of newborns is an obligation. What is necessary to fulfill an obligation is itself obligatory, as stated by jurists of uṣūl al-fiqh (principles of jurisprudence) and legal scholars. [9][11]

Research Findings:

The research yielded several important findings, foremost among them:

1. The root of the term "kidnapping" (khaṭf) revolves around rapid seizure, while "trafficking" (tahreeb) pertains to transporting the kidnapped individual to suspicious and unknown locations.
2. Kidnappers and intimidators are criminals of a high degree, devoid of conscience and mercy due to their assault on defenseless newborn infants.
3. The terminological definition reached by the researcher for kidnapping is: "the rapid seizure and taking of something".
4. The terminological definition for kidnapping and trafficking newborns is: "the rapid and premeditated seizure of newborn infants from their places of care and fleeing with them to suspicious locations for commercial or exploitative purposes".
5. The phenomenon of kidnapping and trafficking newborns is legally classified as ḥirābah (waging war), warranting the severest punishments.
6. The financial, protective (ḥirzī), honor-related ('irdī), and terrorism/intimidation elements are all present in the crime of kidnapping and intimidating newborns, which supports classifying the case under ḥirābah.
7. Types of kidnapping include: threatening kidnapping, magical kidnapping, ḥirābī kidnapping, and playful kidnapping; each has its own specific legal ruling.
8. The necessity of providing advanced and modern preventive measures that thwart criminal kidnappers from achieving their malicious goals.

Research Recommendations:

The research yielded several ideas for further study, including:

1. The best interests of the infant after divorce: its manifestations, rulings, and regulations.
2. The debtor's threat to the delaying creditor: a jurisprudence and applied study.
3. Contemporary discretionary punishments: rulings and regulations.
4. Joking and its related rulings.

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