

## A Legal Study on Kidnapping and Abduction in India : Critical Analysis

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### Abstract

Kidnapping has turned into an imperative social and judicial problem throughout the years. In criminal law, kidnapping is the unlawful diverting (asportation) and repression of a person without wanting to. In this way, it is a composite wrongdoing. It can likewise be characterised as false imprisonment by methods for abduction, both of which are separate crimes that when carried out all the while upon a similar person converge as the single wrongdoing of kidnapping. The asportation/abduction component is commonly however not really directed by methods for power or dread. Kidnapping might be done to interest for ransom in return for discharging the victim, or for other illegal purposes. Kidnapping can be joined by substantial damage which hoists the wrongdoing to irritated kidnapping. Abduction is the offence of wrongfully removing or wrongfully retaining, detaining or concealing a kid or infant. Abduction is characterised as taking endlessly a person by influence, by fraud, or by open power or violence.

**Key Words:** Kidnapping, abduction, crimes, ransom, victim, wrongfully.

## 1. Introduction

In the terminology of the common law in many jurisdictions (according to Black's Law Dictionary), the crime of kidnapping is labeled 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 permanently. 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.

### Research Problem

What is the major lapse in legislation for occurring kidnapping?

## 2. Review of Literature

Section 359 to 369 of the code have made kidnapping and abduction punishable with varying degree of severity according to nature and gravity of the offence. ("Kidnapping and Abduction - Provision and Difference" 2018) Kidnapping is the taking away of a person by force, threat, or deceit, with intent to cause him or her to be detained against his or her will. Kidnapping may be done for ransom or for political or other purposes. Abduction is the criminal act of taking away a person by persuasion, fraud or by open force or violence. (kidnapping and abduction) Kidnapping and abduction are separate offences differing from one another in various respects. Abduction is a continuing offence whereas kidnapping is not so. In the offence of kidnapping, the consent of the person removed is immaterial. But in case of abduction, free and voluntary consent of the person abducted, is a good defence. A person cannot be convicted of an offence of abduction when he is tried on a charge of kidnapping, unless a fresh charge is framed. ("What Is the Punishment for Abduction in India?" 2013)

Abduction in general significance the act of illegally taking away or leading, carrying off by force a child, ward, voter or wife. This may be by fraud, persuasion, or open violence. In a more restricted sense it is confined to the taking of females for the purpose of marriage, concubine or prostitution. (Black Stone in Webster Dictionary) ("Legal Provisions Regarding 'Abduction' in India – Section 362 of IPC" 2013) The number of kidnappings and abductions of women and girls have jumped a whopping 163.8% since 2002. Violent crimes or crimes that fall under the Indian Penal Code (IPC) have jumped about 34% over the last 10 years, from about 1.7 million in 2002 to 2.4 million in 2012. On an annual basis, violent crimes rose 3% from the previous year's 2.3 million. (India fastest growing crime in India). In 44% of cases related to the kidnapping or abduction of females, the cause was not defined. Maximum victims kidnapped

or abducted were in the age group of 18 to 30 years (21,924 victims), and 16 to 18 years (20,838 victims).(Saldanha, Manoj, and Salve 2017). Child trafficking remains rampant in many parts of India. According to Childline India, over 40,000 children are kidnapped every year. About 11,000 of these cases sadly remain untraced. New Delhi has particularly high numbers for kidnapping in India. The majority of abducted children are exploited as sex slaves or trafficked for forced labor. Many others are snatched from their parents and sold for adoption to unsuspecting couples.(The truth about kidnaping in india).Kidnappings and abductions have soared since 2001. The National Crime Records Bureau (NCRB) shows that their share in total crimes against women nearly doubled from 10% in 2001 to 19% in 2016. ("Website" n.d.)

The welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded."(Pandey 2017) Kidnapping—Removing a minor away from lawful custody without the guardian's consent. The victim has to be a minor. The offence of kidnapping is punishable under Indian Penal Code. Abduction— Forcefully compelling a person to go from any place deceitfully. The victim could be a major or a minor. In India, under the Indian Penal Code, abduction is not punishable in itself. It must be accompanied with some other listed offences.(Anand 2010). India ranks second on the list of kidnapping hotspots around the world, a leading daily reports. The leading country on the list is Mexico. India's neighbours Pakistan and Afghanistan rank third and seventh on the list, respectively.The list, published by Control Risk, based the ranking on reports of abductions.("India Ranks Second on List of Kidnapping Hotspots | Latest News & Updates at Daily News & Analysis" 2015).

The Law Commission of India, led by Justice B.S. Chauhan, a former Supreme Court judge, describes inter-spousal child removal as one of the most unfortunate outcomes of such break ups. Children are "abducted" by one parent and taken to a country with a different culture. This can be traumatic as they are also cut off from the other parent. The Protection of Children (Inter-Country Removal and Retention) Bill, 2016 seeks to address the issue.(Rajagopal n.d.) India has found itself in the eye of an international storm by refusing to ratify the Hague Convention on the Civil Aspects of International Child Abduction (1980).

The convention, which has 90 member countries, protects children under the age of 16 from "wrongful removal or retention" by a parent and ensures "their prompt return to the state of their habitual residence." Child Abduction: Committee to hold consultations on India's position in Bengaluru(Neeta Lal n.d.)"There were a significant number of cases from Andhra Pradesh, Kerala and Maharashtra. Because of the cultural differences the kind of cases will vary differently. There's a need to study these cases as well," said a member of the

panel headed by Justice Rajesh Bindal, which was formed in February. ("Child Abduction: Committee to Hold Consultations on India's Position in Bengaluru | Latest News & Updates at Daily News & Analysis" 2017). "The Union Government, however, attaches the highest importance to the matter of prevention of crime and, therefore, has continued to urge the state governments and Union Territories to give more focused attention towards improving the administration of the criminal justice system and taking such measures as are necessary for prevention and control of crime," (PTI 2014).

The effect of newly enacted Juvenile Justice (Care and Protection of Children) Act, 2015 vis a vis offences related to kidnapping and abduction as envisaged in IPC, 1860. We know that kidnapping of a child below certain age (different for male & female). ("Kidnapping Of Child A Bailable Offence Under IPC Becomes Non-Bailable Under JJ Act: A Discussion By Rakesh Kumar Singh | Live Law" 2017). On the other hand, Maoist insurgency with a pan-Indian presence and insurgency in India's north-east has been one of the teething issues seen as an impediment to the peace and tranquillity in these regions. While the Maoists have been in existence since the 1970s, insurgency in the North East, such as the Naga insurgency. ("Kidnap for Ransom and Linkages to Terrorism Finance in India" n.d.) The literal meaning of Kidnapping is stealing of a child. Two types of kidnapping is recognised by Indian Penal Code. One is kidnapping from India and the other is kidnapping from lawful guardianship. Abduction is the offence where a person compels by force or any deceitful means and induces the other to go from any place. There are aggravated forms for both Kidnapping and Abduction. (Omana n.d.)

The number of women reported to have been taken against their will for marriage in India is increasing – rising 71% between 2010 and 2014. Abductions of women for marriage accounted for about 40% of all cases of kidnappings and abductions in India last year, according to recently released government data. A total of 78,446 people were reported abducted or kidnapped in India in 2014 for reasons ranging from adoption to ransom to murder. Of them, 30,957 were girls and women reported taken against their will for marriage, according to National Crime Records Bureau's figures. In comparison, 83 men were reported to have been abducted for marriage during that year. (Pokharel 2015)

The kidnapping and abduction can be contextualised and understood. First, it will review kidnapping and abduction by examining the varying definitions used by practitioners, academics, governmental organisations, non-governmental organisations and private sector interests. The related offences, including piracy, hostage-taking, hijacking, tiger kidnap, express kidnap and state-sponsored rendition, and others is undertaken. There will be an examination and review of the various typologies that have been suggested by researchers in the field, culminating in the suggestion of a revised and comprehensive typology. (the definition ambiguities of kidnapping and abduction.)

### 3. Objects

- To know about kidnapping and abduction.
- To analysis about the difference between kidnapping and abduction.
- To study about the aggravated forms kidnapping and abduction.
- To find the remedy to reduce the offence regarding kidnapping and abduction.

### 4. Hypothesis

- NULL HYPOTHESIS – Kidnapping and abduction is not to be consider to be a penalised offence.
- ALTERNATIVE HYPOTHESIS – Kidnapping and abduction is to be consider to be a penalised offence.

### 5. Materials and Methods

The research is based on doctrinal. The referred sources are like books, journals, E-sources and other secondary sources.

#### **Kidnapping and Abduction in India**

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.<sup>1</sup>

#### **Ten Conditions, Of Kidnapping in IPC**

India has comprehensive legislation to counter kidnapping, with the Indian Penal Code outlining 10 specific offences related to the purpose of the kidnapping. These are:

- Kidnapping a minor for purposes of begging;
- Kidnapping in order to murder;
- Kidnapping for ransom;
- Kidnapping with the intent to secretly and wrongfully confine a person;
- Kidnapping a woman to compel her into marriage;
- Procuration of a minor girl;
- The importation of a girl from a foreign country;
- Kidnapping in order to subject a person to grievous harm, including slavery kidnapping a child under 10 years old;
- Stealing or buying a minor for the purpose of prostitution.<sup>2</sup>

<sup>1</sup> Ratanlal DhirajLal, Indian Penal Code, LexisNexis Butterworths Wadhwa, Nagpur, 13th Edition (Reprint 2004 Edition) 2008, p. 657

<sup>2</sup> <http://www.man.org.np/mdcampus/ppt/17-Kidnapping%d%20extortion-Ranendra%20Man.ppt20an>

**Section 359**

“the crime of kidnapping consists, according to our definition of it, in conveying a person without his consent or the consent of some person legally authorized to consent on his behalf, or with such consent obtained by deception, out of the protection of the law, or of those whom the law has appointed his guardians.” Kidnapping is on two kind, they are:

- Kidnapping in India
- Kidnapping from lawful guardianship

**In Badlu Shah v Emperor** it was held that Kidnapping and abduction do not include the offence of wrongful confinement or keeping, in confinement, a kidnapped person.<sup>3</sup>

**Section 360**

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

**Essential Ingredients**

The following are the essential ingredients of the offence under this section:

- Conveyance of a person: To convey means to carry from one place to another. The conveyance or carrying is a continuous process until the destination is reached. In the case of any offence under this section, the destination must be some foreign territory.
- Beyond the limits of India: these words in the section indicate that for an offence under it must be to some foreign territory.
- Without the consent of that person or of some person legally authorized to consent on behalf of that person: A consent given under a misapprehension of fact, is not true consent.<sup>4</sup>

**Section 361**

**Kidnapping from lawful guardianship:** 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.

The offence under this section may be committed in respect of either a minor or a person of unsound mind. To kidnap a grown-up person, therefore would not amount to an offence under it.<sup>5</sup>

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<sup>3</sup> AIR 1929 All 454

<sup>4</sup> K.K Singh and R.Bagga, “Indian Penal Code”, The Law Book Company, Allahabad, 2nd edition, 1994, pg.3.

<sup>5</sup> Ratanlal DhirajLal, “Indian Penal Code”, LexisNexis Butterworths Wadhwa, Nagpur, 13th Edition (Reprint 2004 Edition) 2008, pg. 649.

The object of this section is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the protection of the rights of parents and guardians having the lawful charge or custody of minors or insane persons.

In **Restated in Biswanath Mallick v. State of Orissa**, in this case the court has explained about the Ingredients: This section has four main essentials:

- Taking or enticing away a minor person or a person of unsound mind.
- Such minor must be under the age of sixteen years, if male, or under the age of eighteen years, if a female.
- The taking away or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.
- Such enticing away must be without the consent of the lawful guardian.<sup>6</sup>

In this case **Vishnu v. State**, the word “keeping” implies neither apprehension nor detention but rather maintenance, protection and control, manifested not by continual action but as available on necessity arising and this relation between the minor and the guardian is certainly not dissolved so long as the minor can at will take advantage of it and place herself within the sphere of its operation.<sup>7</sup>

In case of **Parkash v. State of Haryana** it was said that the two words ‘takes’ and ‘entices’ as used in Section 361, IPC are intended to be read together so that each takes to some extent its colour and content from the other.<sup>8</sup>

If the minor leaves her paternal home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in Section 361, IPC. Consent given by the guardian after the commission of the offence would not cure it.<sup>9</sup>

### **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.

**Oroos Fatima v Sr. Supdt of Police, Aligarh**, The person against whom the offence is committed must be under the age of sixteen, if a male, and under the age of eighteen years if a female. Where a girl of 23 years of age left her parents of her own will and married a man, section 363 or 366 was not attracted.<sup>10</sup>

**Bhajan Lal v. State of U.P.**, Where in a case of kidnapping the girl deposed that

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<sup>6</sup> 1995 CrLj 1416 (Ori)

<sup>7</sup> 1997 Cr LJ 1724

<sup>8</sup> 2004 Cr.L.J. 595 SC

<sup>9</sup> Ganesh, (1909) 31 All 448

<sup>10</sup> 1993 CrLJ 1 (All)

she had gone with the accused voluntarily, his conviction u/s 363 was set aside.<sup>11</sup>

### **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”

This section merely gives a definition of the word “abduction” which occurs in some of the penal provisions which follow. There is no such offence as abduction under the Code, but abduction with certain intent is an offence. Force or fraud is essential.

#### **Ingredients- this Section Requires Two Things**

- Forceful compulsion or inducement by deceitful means.
- The object of such compulsion or inducement must be the going of a person from any place.<sup>12</sup>

**Allu vs Emperor,** In view of the definition, the word ‘force’ connotes actual force and not merely show or threat of force. It would be an offence to carry a grown-up woman by force against her own will even with the object of restoring her to her husband.<sup>13</sup>

**R. vs Cort** The expression deceitful as used here, is wide enough to include inducing a girl to leave her guardian’s house on a pretext. It also implies the use of misrepresentation and fraud by act or conduct.<sup>14</sup>

#### **Difference between Kidnapping and Abduction**

The difference can be understood by the mentioned definition in a definitive way but to go into dept, when we put the practical and theoretical implication the following difference comes out in point

- ‘Kidnapping’ is committed only in respect of a minor under sixteen years of age if male and under eighteen years if a male or a person of unsound; ‘abduction’, in respect of a person of any age.
- In ‘Kidnapping’, the person kidnapped is removed out of lawful guardianship. A child without a guardian cannot be kidnapped. ‘Abduction’ has reference exclusively to the person abducted.
- In Kidnapping, the minor is simply taken away. The means used may be innocent. In ‘Abduction’, force, compulsion, or deceitful means are used.
- In kidnapping, consent of the person taken or enticed is immaterial; in abduction, consent of the person moved, if freely and voluntarily given, condones abduction.

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<sup>11</sup> 1996 CrLJ 460 (All)

<sup>12</sup> Ratanlal DhirajLal, Indian Penal Code, LexisNexis Butterworths Wadhwa, Nagpur, 13th Edition (Reprint 2004 Edition) 2008, p. 657

<sup>13</sup> AIR 1925 Lah 512

<sup>14</sup> (2004) 4 All ER 137 (CA)

- In ‘kidnapping’ the intent of the offender is a wholly irrelevant consideration: in abduction, it is the important factor.
- Kidnapping from guardianship is a substantive offence under the Code; but abduction is an auxiliary offence, not punishable by itself, but made criminal only when it is done with one or other of the intents specified in S.364.<sup>15</sup>

### **Aggravated Forms of Kidnapping and Abduction**

*Section 363-A in The Indian Penal Code – Kidnapping or maiming a minor for purposes of begging*

- 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.
- Whoever maims any minor in order that such minor may be employed or used for the purposes of begging, shall be punished with imprisonment for life, and shall also be liable to fine.
- 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 purposes of begging.
- In this section,
  - (a) “begging” means
    - (i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;
    - (ii) entering on any private premises for the purpose of soliciting or receiving alms;
    - (iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;
    - (iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;
  - (b) “minor” means
    - (i) in the case of a male, a person under sixteen years of age; and
    - (ii) in the case of a female, a person under eighteen years of age.

*Section 364 in The Indian Penal Code – Kidnapping or abducting in order to murder*

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a

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<sup>15</sup> Ratanlal DhirajLal, Indian Penal Code, LexisNexis Butterworths Wadhwa, Nagpur, 13th Edition (Reprint 2004 Edition) 2008, p. 658

term which may extend to ten years, and shall also be liable to fine.

*Section 364-A in The Indian Penal Code – 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 apprehension 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.

*Section 365 in The Indian Penal Code – Kidnapping or abduction 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.

*Section 366 in The Indian Penal Code – Kidnapping, abducting 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 another person shall also be punishable as aforesaid.

*Section 366-A in The Indian Penal Code – Procuration 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.

*Section 366-B in The Indian Penal Code – 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.

Sections 366 and 366 B are intended to punish the export and import of girls for prostitution. Section 366 A deals with procurement of minor girls from one part of India to another part. Section 366B makes it an offence to import into India from any country outside India below the age of twenty one years for the purpose of prostitution.

*Section 367 in The Indian Penal Code – 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 subjected 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 may extend to ten years, and shall also be liable to fine.

*Section 368 in The Indian Penal Code – 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.

## 6. Conclusion

Basic to battling trafficking of children is the co-task between the legal frameworks, the government bodies and the non-government bodies the world over. The going of deterrent laws for the trafficker, instead of the casualty is a stage towards diminishing the event of trafficking in children, anyway one must remember that the criminal mind will dependably discover its approaches to go around the laws passed. Most social orders are tormented by the ailment of youngster trafficking, making it today a "worldwide phenomenon" yet it remains to some degree "obscure". The correct extent of the offence isn't spoken to as far as information and measurements and the correct methods of execution are still obscurity. There is absence of awareness among natives – potentially due to the bullheadedness of state specialists to reveal ills that influence national dignity and recklessness.

Co-task among nations should be cultivated to counter this phenomenon, for case by consistency in punitive arrangements between nations which would be a welcome thought to proportional requirement of protection and prevention in trafficking which is for the most part a "cross-outskirt" wrongdoing. This consistency can be accomplished through endorsement of international instruments and national implementation of these international humanitarian instruments identifying with trafficking of children.

## 7. Suggestion

- Education is the vital key. The families and the group must be educated, educated and enabled with the goal that they can give care and protection to their children. Unskilled parents are insensible of their children rights. They should be made mindful of child/rights, it is just conceivable through education.
- The second most critical lesson is public awareness. Public awareness about kidnapping and abduction the neglect must not be raised and society demeanours need to change. Legislation alone won't bring adequate effect unless awareness and public states of mind are changed. Awareness of their rights and data about governmental help would guarantee legitimate use of different plans and laws surrounded by the government.
- Steady implementation and enforcement of administrative system are likewise imperative. The fundamental test in India remains enforcement and the way that there is a sure level of exemption for those disregarding the law. Involvement in India demonstrates that while great laws and arrangements can be received by the central government, implementation is regularly a test.
- Parents, teachers have a key part to shield children from kidnapping and abduction. Parents should fill the climate of the home with great contemplations and deeds that would help bring up more adjusted children. At school moral esteems should be conferred and steps taken to guarantee that the wards turn out to be better people.
- Media ought to likewise assume dynamic part in instructing and sharpening the general public about kidnapping and abduction by giving required publicity about the current laws against kidnapping and abduction

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