



Crime of Baby Dumping: A Review of Islamic, Malaysian and Nigerian Laws

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ABSTRACT

Islam prohibits all acts that endanger the life of a child or exposes children to abuse including dumping of babies. Those acts are crimes punishable under the law. In a similar vein, internationally, baby dumping and all acts that expose children to danger are prohibited under the United Nation's Convention on the Rights of the Child 1989 (CRC). Malaysia and Nigeria, like most nations of the world, are signatories to most international legal frameworks on child protection including the CRC. In Malaysia and Nigeria, baby dumping is an alarming phenomenon. Many babies suffer or even die as a result of the act of baby dumping. This article intends to examine the laws relating to the protection of babies from dumping in Malaysia and Nigeria. Discussions will include the position of baby dumping in Islam to serve as a comparison. Examination will extend to analysis on whether the laws in Malaysia and Nigeria are adequate to address the problem of baby dumping and to fully protect children from baby dumping. The study is basically a library based research where reference is made to books and articles. A comparative legal research methodology is employed in looking at the positions in Islam, Malaysia and Nigeria. It is hoped that the findings on child protection laws, particularly those related to baby dumping in the Islamic, Malaysian and Nigerian laws, will provide better protection for babies and prevent them from being dumped.

Keywords: Baby dumping, Islamic law, Malaysian law, Nigerian law

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INTRODUCTION

Dumping of babies may happen at any place and in any society. The classic case of children dumped by parents is the exposure of babies to the elements for rescue by 'kind strangers' though the act barely sidesteps infanticide. Western

anthropologists have mentioned the case of Prophet Musa who was placed in a basket and floated at the edge of Nile River and rescued by Fir'awn's people as a proof that dumping of babies is not something new (Brick, 2000; Mohd, 2008). A historian, John Boswell, estimates that during the first three centuries of the Christian era, about twenty to forty percent of newborns were dumped or abandoned in Rome. Similarly, a large number of newborns were dumped in the middle ages (Kertzer, 2000; Mohd, 2008). Historical research reveals that a foundling system arose in Europe as early as the thirteenth century (Guimaraes, 2000; Mohd, 2008). The number of foundlings home grew as they first spread throughout much of Italy and later to France, Spain and Portugal (Viazzo *et al.*, 2000; Mohd, 2008). By the nineteenth century, foundling homes had appeared not only throughout these countries but also in Ireland, Poland, Austria and Russia. By the middle of the nineteenth century, over hundred thousands of babies were dumped per year in Europe by people with no family, kin and property (Kertzer, 2000; Mohd, 2008).

In Malaysia, the nature and the rate of reported cases on baby dumping are disturbing. In most cases, perpetrators of this heinous crime, discard the babies in any place without being mindful of the consequences of such action on the innocent baby. This is largely due to fear of arrest and attempt to conceal their identity. It is therefore common to see babies dumped in the garbage or dustbin, along road side or wrapped in newspaper and

kept under the harsh beating sun (Termizi *et al.*, 2014). Students who deliver at the hostel abandon such babies in the toilet or birth room (Adesiyun, 2010). The manner and place of dumping are often linked directly with the effects of such dumping on the baby. A baby dumped in the mosque or motherless baby's home has a greater chance of survival than a baby dumped inside a dustbin or left under the scorching sun (*New Straits Times*, 18 July 2010). The Federal Criminal Investigation Division Director, Datuk Seri Mohd Bakri Zinin, reported that the cases of baby dumping in Malaysia are increasing. From 2005 to January 2011, a total of 517 baby dumping cases were registered in the country. He said 203 of the cases involved boys, 164 girls, while the gender of the other 150 babies could not be ascertained. He also told reporters that, "for cases in which the gender cannot be identified, post-mortems could not be carried out because the bodies were too badly decomposed. Of the total, 230 were found alive while 287 were dead" (*Bernama*, 9 February, 2011). Meanwhile, according to PDRM's statistics on baby dumping cases in the subsequent years, there were 98 cases in 2011, 88 cases in 2012, 90 cases in 2013 and 13 cases as of March 2014 [Malaysian Royal Police (PDRM), 2010-2014]. Additionally, in Parliament, the Deputy Minister of the Ministry of Woman, Family and Community Development, Datuk Azizah Mohd Dun, stated that there were about 26 reported cases of abandoned babies nationwide for the first quarter of 2014

(BERNAMA, 2014). According to JKM's statistics on abandoned child as described under section 17 (1)(e)(ii) of the Child Act 2001, there were 49 cases in 2010 (Jabatan Kebajikan Masyarakat, 2011), 59 cases in 2011 (Jabatan Kebajikan Masyarakat 2011), 49 cases in 2012 (Jabatan Kebajikan Masyarakat, and 47 cases in 2013 (Jabatan Kebajikan Masyarakat, 2013). This information seems to highlight the worsening yearly scenario of baby dumping in Malaysia that requires serious attention from all including the public.

In Nigeria, the rising scourge of baby dumping has led to the question as to whether this tradition of dumping babies still exists (Adesiyun, 2010). Although there are no accurate data on cases of baby dumping in Nigeria, the figures put together by some states led to the rising concern of the rampant cases of baby dumping across the country. For example, the Special Adviser to the Lagos State Government on Youth and Social Development recently revealed that Lagos State in 2011 recorded 497 cases of abandoned babies dumped in different streets of the state (Okoje, 2012). In fact, baby dumping has been acknowledged as one of the common forms of child abuse in Nigeria (Akani & Erhabor 2006). It is a cruel act that is contrary to the Nigerian law in every respect; hence, wrong doers must be made to face the full wrath of the law (Ali, 2014).

This article therefore aims at examining the menace of baby dumping vis-à-vis its position under the Islamic law, Malaysian law and Nigerian Law. The article provides

a general overview of baby dumping in Islam and looks at how Islam protects babies from being dumped. The article finally analyses and provides suggestions, where relevant and necessary, on how babies can be given better protection from the menace of baby dumping.

GENERAL OVERVIEW OF BABY DUMPING IN ISLAM

The Arabic word for a baby who is dumped is *al-tifl al-laqit* (Al-Subail, 2005). Al-Sarakhsi defines a foundling (*laqit*) as "a name given to a living child who is dumped by his relatives due to fear of the family or accusation" (Sarakhsi, 2000). The Qur'an has mentioned some incidences of dumping. The Qur'an mentions the story of Prophet Yusuf who was dumped into a well by his siblings (Qur'an, Yusuf, 12:10). However, the case of Yusuf is slightly different from our topic since he was grown up and the crime was done by his brothers out of jealousy (Mohd, 2008). Similarly, the Qur'an also mentions the story of Prophet Musa (a.s.) (when he was a baby) whose mother was inspired by Allah the Almighty to put him in a basket and dumped him into the river. The basket was later on picked up by the Pharaoh's servant (Qur'an, Taha, 20: 38-39; Qur'an, Qasas 28: 7-8). In relation to the *Sunnah* of the Prophet, the Prophet (PBUH) gave several verdicts with respect to the position of the baby. For example, the Prophet (PBUH) stated in one of his traditions that when a dumped baby is found, just two witnesses should be notified and the story must not

be made a secret (Ahmad, vol. 29, Hadith 17481). However, it was during the time of the companions that the cases of baby dumping became known. Hassan al-Basry reported that in one occasion a dumped baby was found and brought before Ali (RA) and Ali stated that the person who took the baby had done a commendable act and the baby is a free person (Sarakhsi, 2000). This occasion seems to highlight a very important rule on the duty to take up a dumped baby, which is considered as a recommended act. The above occasion also shows that Islam appreciates the person who helps the vulnerable child. The incident further upholds the status of a dumped baby as to be a free person.

How Islam Protects Babies from Dumping

Islam enjoins love and mercy to children. The Prophet states “He is not from us, he that does not have mercy on our young and does not respect our old” (Abu Dawud, Vol. 4, Hadith 4945). Therefore, no harm can ever be imposed on children, particularly if dumping may lead to death. To that effect, Islam prohibits infanticide out of any reason that may include poverty or shame. The Quran states to the effect that “Kill not your children on a plea of want, we provide sustenance for you and for them” (al-Quran; al-An’am 6:151). The Quran further states that “If a man kills a believer intentionally, his recompense is Hell, to abide therein (for ever)” (Al-Qur’an, Nisa 4:93). The killing of a human being is considered a very serious matter that the Qur’an equates it with the killing

of the whole of mankind (Al-Qur’an, Al-Maaidah 5: 32; Sudan *et al.*, 2012). Similarly, abuse of dignity is an effect of dumping; the Qur’an protects the right to dignity of every child (Qur’an, Isra 17: 70). The Qur’an states “Verily, We created man in the best mould” (Qur’an, al-teen: 4). The messenger of Allah equally describes the dignity of man in the following words, “People are God’s children and those dearest to God are the ones who treat His children kindly” (Al-Tibrizi, 1979; Hadith 4998). In yet another tradition, the Prophet (PBUH), while facing the Holy Ka’aba, said “You are most pure and most dignified, but by the One in whose hands Muhammad’s life reposes, the sanctity and honour of a believer, his life and his property, is far greater than yours in the eyes of God” (Al-Tibrizi, 1979; Hadith 2724). The verses of the Quran and the hadith of the Prophet (PBUH) clearly prohibit any act that may harm a baby. The Quranic provision clearly and strictly prohibits infanticide, and killing of children leads to an inference that the act of dumping of babies is condemned and regarded as an offence. Where the act of dumping babies leads to the death of babies, it can fall under the crime of murder that is strictly prohibited in Islam.

Furthermore, the place in which a baby is dumped may affect his health and well being. For example, a baby that is dumped in a very cold weather can develop asthma, pneumonia and other lung related diseases (Jackson, 2011). Islamic law also emphasises on the right of a child to good health. As a mark of acknowledgement

of the importance of health in Islam, the Quran states the words of Prophet Ibrahim who mentioned, “And when I am ill, it is He who cures me” (Qur’an, al-Shu‘ara: 80). Al-Tha’labiy opined that attributing cure to Allah is a mark of respect and the believer is expected to take all the practical steps towards attainment of good health (Al-Tha’labiy, 2002).

The fact that Islam places great importance to the right of a child to good health can be appreciated from the fact that Islam calls for steps to be taken to ensure that the child’s health is respected even before the child is born by ensuring that the expecting mother is given adequate care and protection so that the foetus is delivered unharmed (Arfat, 2013). Although fasting is one of the five pillars of Islam, a pregnant or breastfeeding mother is allowed by shari’ah to leave the fasting of the month of Ramadan if the fasting can be a threat to the health of the mother or her foetus (Qur’an, Al-Baqarah: 184; Shaybany, 1406 AH). These authorities have made clear the fact that it is obligatory on the believers to avoid any thing that could be a threat of the right of a child to dignity. Baby dumping is indeed a terrible practice that exposes a child to various acts of danger, all things that could lead or cause baby dumping must be avoided because prevention is always better than cure (Noordin *et al.*, 2012). If this step is not taken, the innocent children will be the ones to suffer.

The definition of abandoned baby (*laqit*) in Islam clearly provides fornication or adultery as one of the causes of baby dumping. It seems that this cause

is common in all jurisdictions since thousands of years ago. Based on the concept of ‘prevention is better than cure’, the Islamic law strictly prohibits adultery and regards it as a serious criminal offence. The Quran states, “Do not approach adultery; it is indeed an abomination and an evil way” (Qur’an, Isra: 32). In fact, it is prescribed as a grave sin in the eyes of Allah, which requires sincere repentance from the adulterer (Qur’an, Furqan: 68-69). The Qur’an prescribes punishment of 100 lashes for fornication (Qur’an, Nur: 2). According to al-Qaradawi, zina is a crime under the Islamic law that opens the gate for other crimes. Believers should therefore distance themselves from anything that could lead them to commit such a wrongful act (Al-Qaradawi, 1995). Based on this provision, it is very clear that the rationale of prescribing the punishment by the shari’ah is to serve as deterrence and not actually the infliction of harm (Al-Qurtubi, 2002). The fact that four reliable witnesses are required to prove adultery equally underscores the fact that it is meant to be for deterrence purposes since it will be very difficult for such witnesses to witness such a crime at the same time (Audah, 2005).

For those who may think of committing baby dumping for financial reasons, Islam makes it clear that the sustenance of the baby is in the hands of Allah. The Qur’an states “Kill not your children for fear of want. We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin” (Al-Qur’an, 17: 31). The

Prophet (PBUH), in response to a question asked, “what is the greatest sin?” replied, “To ascribe partner to Allah, when he is the one who created you.” “What next?” asked the companion, and the Prophet (PBUH) replied saying, “To kill your child out of fear that he will share your food” (Muslim, Vol. 9; Hadith 6861; Bukhari, Vol. 6; Hadith, 4761).

A further supporting fact about the Islamic law’s approach to preventing baby dumping is the fact that Islam allows marriage of girls without specifying a particular age limit. The Qur’an does not specify any specific age for marriage. However, the Qur’anic verse states that, “And test the orphans [in their abilities] until they reach marriageable age” (Qur’an, Nisa: 6); by age of marriage in this verse, Allah refers to attainment of adulthood (Al-Baghwy, 1997; Jimeta, 2008). This position helps girls who attain maturity to lawfully get married and satisfy their sexual urge without indulging in *zina*, thereby leading to pregnancy outside their matrimonial home.

Islam promotes *al-‘amr bi al-ma’ruf wa al-nahyu ‘an al-munkar* (calling others to do good and prevent wrong doing). The Qur’an, in several places, encourages believers to call each other to good and prevent wrong doings (Qur’an, Ali Imran, 3: 104 and 110). Taking this approach will enlighten the potential parents of the danger and repercussion of the crime of baby dumping in this world and in the hereafter, and help in curtailing this serious crime because it discourages the practice and all acts that lead to it.

Further protection is manifested through provision on punishment of wrong doers accordingly if the crime is committed so that it will serve as deterrence to the individual and to others. If the baby dies as a result of the dumping, the offender will be punished based on the principle of retribution. However, if it has not resulted in death, the *ta’azir* (discretionary) punishment will be the appropriate punishment for the crime (Al-Subail 2005). Finally, it is important to provide for reformation of the offenders after their punishment. This will help in preventing return to the crime because if they are reformed, they will become good persons and hence there will be no chances of returning to the crime (Danbazau, 2007).

The Islamic law further protects babies who are dumped by enjoinder of picking up. However, the nature of this protection is more on reforming the act of dumping rather than preventing. Muslim Scholars opined that picking a dumped baby is a very commendable act of piety that comes next to the belief in Allah (Al-Subail, 2015). This opinion is premised on the Qur’anic provision that repeatedly calls for the respect of the sacred of the life of human beings (Qur’an, al-An’am 6: 151). In fact, the Qur’an states that saving a single life of a human being is like saving the life of the whole mankind (Qur’an, Maaidah 5: 32). Islam enjoins to be good to others as it states, “And do good that you may prosper” (Al-Quran, Surah al-Hajj, 22: 77). It follows that the dumped baby can be taken care of either by the finder

who is qualified or surrendered to the government (al-Sarakhsi, 2010; al-Hattab, 1992; al-Dimyati, n.d.). If that happens, the innocent baby will enjoy better protection.

PROTECTING BABIES FROM BEING DUMPED IN MALAYSIA

Several factors could be attributed as the causes of baby dumping in Malaysia. A factor that is generally seen as the common cause of baby dumping is extra marital relationship. When young girls get pregnant outside marital ties, the baby becomes a burden in many aspects. It affects the mother socially, educationally, financially and emotionally. In a society like Malaysia, religion is valued and the social norm rejects immorality, where a woman who gets pregnant outside her matrimonial home will be rejected by the society (Yousif, 2004). Similarly, having a baby outside the marital home will have a serious financial implication on the girl. This is because since the child lacks a legitimate father, the mother becomes responsible for the training and upbringing of the child. Under the Islamic law, even if the person responsible for the pregnancy is known and has acknowledged responsibility for the pregnancy, he is not considered as the father of the child that will be saddled with the financial responsibility of the child's upbringing (Gunaim, 1995).

Further, educationally, the child will be a source of disturbance and problem for the mother. It is a fact that child upbringing requires time and energy; where the child is legitimate, the family especially the

father can support the mother in raising their child. If the child is illegitimate, however, the mother will do everything alone without the support and assistance from the father. This will seriously affect her educational pursuit. Psychologically, having an illegitimate child will no doubt affect a woman especially in a social setting like that of Malaysia, where religious and cultural norms are highly respected. If the society rejects the woman for that action, she will feel isolated and will have psychological trauma (Smith, 2004).

The effect of ratification of the Convention on the Rights of the Child (CRC) by the Malaysian government has led to the enactment of the Child Act 2001 (the CA) (Act 611) (Khalil, 2001). Generally, children in Malaysia enjoy special protection under the CA. In relation to protection of babies from dumping, the CA regards the act of dumping or abandonment as an offence punishable under the law from a fine not exceeding twenty thousand ringgit to imprisonment for a term not exceeding ten years, or both [Child Act 2001, section 31(1a)].

The CA also impliedly protects an unborn foetus from being dumped through protecting the unwedded mother of the child as part of children in urgent need of protection [Child Act 2001, section 41 (2) (d)]. Although the law obviously attempts to protect a pregnant female child, it indirectly provides protection for the pre-born baby as this provision is in fact included to give protection to unborn babies so that they are delivered in a safe and protected place

and at the same time, the scenario of baby dumping can be decreased (Majid, 2002). Dumping of babies is also regarded as a criminal offence punishable under the Penal Code with imprisonment for a term up to seven years, or with a fine, or both (Malaysian Penal Code, Act 574, section 317; Rathakrishnan, 2013).

Although the act of baby dumping and its punishment have been stated by existing laws in Malaysia, this unfortunately does not absolve a person's responsibility for the dumping or any other criminal liability as a result of the dumping. By virtue of the vulnerability of the baby and its inability to protect itself, death, injury and any form of abuse can result from this action. The illustration of section 317 of the Penal Code clearly buttresses this point. According to the illustration, the punishment for dumping a baby does not stop the court from administering further punishment for harm or injury caused to the baby as a result of the dumping.

The scenario and circumstances surrounding the dumping will largely determine the nature of the *mens rea* (criminal intention) and the *actus reus* (criminal action) of the offence (Abdul Rahim, 2012). Where the baby is put inside a plastic bag or thrown inside a gutter, the probability in all these situations is that the child will die, hence amounting to culpable homicide. The Penal code states, "Whoever causes death by doing an act with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death,

commits the offence of culpable homicide" (Penal Code, Section 299; see also Section 300 of the Penal Code).

On the contrary, where the act of dumping is made in such a manner that death is unlikely such as dumping the child in a mosque, Police station or motherless baby's home but unfortunately results in death, it will be unreasonable to charge the offender under section 317, and there is a need to further charge the offender under section 304 which is provided for culpable homicide not punishable with death.

Where the child dies as a result of the dumping and such act is done by the mother immediately after the child's birth, she could have lesser punishment if she could establish that she became mentally disturbed as a result of the child birth and thereby dumping the baby. Such act is referred to as infanticide by the Penal code (Section 309A). The punishment for the offence is prescribed, "Whoever commits the offence of infanticide shall be punished at the discretion of the Court, with imprisonment for a term which may extend to twenty years, and shall also be liable to fine" (Section 309B of Penal Code).

The punishment provided for baby dumping is a positive move towards protecting children from being dumped. With the provision of the Penal Code that provides for even a more serious punishment in case of death or other harm to the child, deterrence will be achieved and that is very commendable. Similarly, the Malaysian government has equally embarked on campaigns on secondary

school girls on matters relating to sexuality to fight against the crime of baby dumping, according to Women, Family and Community Development Deputy Minister, Datuk Azizah Mohd Dun; to tackle baby dumping, the ministry now has seven programmes which include the National Policy and Plan of Action on Reproductive Health and Social Education, introduced in 2009. Besides that, the Reproductive and Social Health Programme (Pekerti) was introduced in 2012 as a co-curricular activity in schools, which targeted students in Year Six, Form Three and Special Education. In 2012, 2,376 students from 33 schools took part in the programme. The project was then implemented in 2014 by carrying out Training for Trainers (TOT) course at three primary, secondary and special education schools in September 2014 (New Straits Times online, 19 June 2014).

There are also efforts to prevent baby dumping by non-Governmental organisations (NGO) through protection of unwed mothers until delivery of the baby. These include Raudatus Sakinah, KEWAJA, Darul Wardah, etc. (Rumah Perlindungan Wanita, n.d.). It is also interesting to note that apart from legal sanctions and social programmes to tackle baby dumping, Orphan Care (an NGO) introduced Baby Hatch facility in 2008 to reduce cases of baby dumping. Through the Baby Hatch facility, a person may place his or her baby in a safe place without dumping him (Orphan Care Children, n.d.). Even though there is contention that this kind of

protection may encourage more babies to be dumped and act of adultery, so far there is no research done that proves this. The contention seems to be a mere contention. Furthermore, before the establishment of the baby hatch, the number of abandoned babies was alarming. Meanwhile, where babies are abandoned, something must be done in order to protect the dumped babies. These are positive efforts that will immensely help in reducing the cases of baby dumping at unsafe places.

Baby dumping is contrary to the CRC for which Malaysia is a signatory. Baby dumping contravenes the provision of the Convention on the Rights of the Child which states that every child has the right to know and to be cared for by his parents (Article 7 of the CRC). It equally contravenes the right to survival and development (Article 6 of the CRC) and the right to dignity provided by the CRC (Article 19 of the CRC).

PROTECTING BABY FROM DUMPING UNDER NIGERIAN LAW

Several factors are attributable as the causes of baby dumping in Nigeria. Extra marital relation is no doubt a major cause of baby dumping. Due to fear of societal stigma, some women try to conceal the pregnancy and after delivery, dump the baby (Ojedokun & Atoi, 2012). After birth, the financial challenges associated with taking care of babies equally make mothers dump their babies (Ojedokun & Atoi 2012). Similarly, in Nigeria, before the Child's Right Act 2003 was

passed into law, the practice had been the expulsion of any female student that became pregnant before completing her secondary education. The situation was so bad that even pregnancy tests had to be conducted on the girls before they sat for their final examination. However, the Child's Right Act categorically states "A female child who becomes pregnant before completing her education shall be given the opportunity, after delivery, to continue with her education on the basis of her individual ability" (Section 2(5) of the Child's Right Act 2003). The implication of childhood/extra marital pregnancy on the educational pursuits of young girls will certainly push some of them into abandoning their baby after he/she is delivered (Ojedokun & Atoi, 2012). Similarly, poverty is another very important factor that contributes to baby dumping. Modernity, with its challenges and demands, has made the task of raising children very difficult. Providing children with their needs such as food, shelter, medical care and education could be very challenging and hence resulting in the dumping of babies by parents who they feel they cannot take care of their babies (Ojedokun & Atoi, 2012).

Baby dumping becomes problematic because it is unethical and grossly violates the dignity and sanctity of life of the most vulnerable members of the society (Ojedokun & Atoi, 2012; see Section 237 of the Penal Code). To that effect, the state must impose strict sanctions on all those who violate the rights of children.

The explanation to the section states that the section does not prevent the trial of the offender for culpable homicide if the child dies in consequence of the exposure or abandonment (Explanation to section 237 of the Penal Code). Going by the Penal Code, a person will be held directly responsible for any harm that befalls a child as a result of dumping. Even where a baby does not die or suffer harm as a result of dumping, baby dumping undoubtedly amounts to a denial of the child's right to dignity. According to the constitution, "Every individual is entitled to the respect of the dignity of their person, and accordingly, no person shall be subject to torture or to inhuman degrading treatment" (Section 34(1) of the Constitution of the Federal Republic of Nigeria, 1999). The Child's Right Act 2003 equally states that no child shall be subjected to any cruel or inhumane kind of treatment (Article 37 Child's Right Act 2003). It further states that "Every child has a right of survival and development" (Section 4 of the Act). The 1999 Constitution also states that every person has a right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. In *Esabunor v Faweya* ((2008) 12 NWLR (pt 1102)) the Court of Appeal re-echoed the provisions of Section 33 of the Constitution and reaffirmed that any attempt to take the life of an individual outside the provisions of the Constitution is illegal and must be condemned.

Under the Criminal Code and the Penal Code, the act of causing the death of another person is a homicide punishable by law. The Criminal Code has clearly mentioned that a child that is born alive is capable of being killed. That indicates where a baby dumped immediately after its birth dies, the mother will be charged for murder (Section 307 Criminal Code).

This is similar to Malaysia, a mother who kills her baby due to disturbance of the mind caused by the child birth will get a lighter punishment for manslaughter and not murder under the Nigerian law. According to the Criminal Code, a woman who wilfully kills her child who is under twelve months old, and at the time of the killing, her balance of mind was disturbed because she had not fully recovered from the effect of childbirth or because of the effect of lactation following the birth of the child, is guilty of the felony of infanticide, and the woman is dealt with as if she has committed manslaughter (Section 237A Criminal Code).

The CRA states that a child can bring an action for any harm done to him before his birth. It states, "A child may bring an action for damages against a person for harm or injury caused to the child wilfully, recklessly, negligently or through neglect before, during and after the birth of the child" (Section 17(10) of the Act). This provision has clearly shown that a baby who is dumped is allowed by the Child's Right Act to institute a legal action against his parents or any person responsible for dumping him upon attaining maturity.

In a similar vein, the threat to child's health caused by dumping makes it contrary to the Child's Right Act 2003. This is because the Act has guaranteed the right of every child to good health and all acts or omissions that threaten the right of the child to good health are contrary to the Act. The Act states, "Every child is entitled to enjoy the best attainable state of physical, mental and spiritual health" (Section 13 of the Act).

The right to health is part of the rights reflected under chapter II of the 1999 Constitution (Fundamental Objectives and Directive Principles of State Policy), which provisions are non-justiciable (*Fawehinmi v Abatcha* (1998) HRLRA p549; Section 13 of the 1999 Constitution). The Child's Right Act 2003 equally guarantees the rights of the child to protection from all forms of harms and injury (Section 11 of the Act).

Nigeria is a signatory of the CRC and the African Charter on the Right and Welfare of the Child. Baby dumping is clearly a contravention of both instruments. The African Charter on the Right and Welfare of the Child guarantees every child the right life (Article 5), right against torture and cruelty (Article 16), right to parental care and protection (Article 19), and the right to good health which baby dumping contravenes (Article 14 of the African Charter on the Right and Welfare of the Child).

The punishment provided by the several laws mentioned is a good means in protecting babies from being dumped

due to the deterrence involved in the punishment. Similarly, the non-expulsion of young girls from school is equally a good step because it prevents dumping due to fear of education (Section 2(5) of the Child's Right Act 2003). Meanwhile, creating awareness and addressing poverty will equally help in protecting babies from being dumped. Baby dumping in Nigeria is a crime and the Nigerian law is very clear to the effect that anyone who dumps a baby and thereby causes harm to a baby will face the full wrath of the law. There is no gain saying the fact that the punishment provided under the law in Nigeria is commensurate to the wrong being done to the child. However, the enforcement mechanisms need to be improved to enable the law to effectively work for the good of our children. The Police, courts and social workers need to be trained and retrained on the effective ways of ensuring that the laws are effectively harnessed for the betterment of all. Even if the laws are in place, if the ordinary man does not know of the existence of the law, the effectiveness of the law cannot be appreciated. It will therefore be proper to state that enlightenment needs to be made on the existence of the law and punishment provided by the law for baby dumping. In order to realise the much needed deterrence, trial of cases of baby dumping needs to be given the highest level of publicity.

CONCLUSION

Baby dumping is a crime under the Islamic law, Malaysian law and Nigerian law. The crime attracts similar punishment in the form of sanction under all laws. Although under the Islamic law, there is no fixed punishment, the punishment can be higher depending on the effect of the dumping on the baby. The Islamic approach of prevention will equally be a suitable and appropriate approach to be applied in Malaysia and Nigeria in tackling the menace of baby dumping. Prohibition of adultery, intoxication and all forms of evil is a good measure towards preventing baby dumping. The permission of early marriage and promotion of justice in the distribution of wealth so that poverty will be reduced are positive steps towards the prevention of the crime of baby dumping. In view of the seriousness of this crime and the personalities involved, it is suggested that campaign on sexuality needs to be improved. The government needs to create and improve motherless baby homes for the purpose of taking care of dumped children. Most importantly, the government should allow parents who cannot take care of their babies to keep such babies in such homes for that will significantly reduce the cases of dumping. The sanctions provided by the Malaysian and Nigerian laws are reasonable and satisfactory; however, to make the laws more effective, there is a need to ensure that proper investigation is done to apprehend and sanction wrong doers in accordance with the law.

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