

LEAVING CHILDREN WITHOUT REASONABLE CARE AND SUPERVISION: BETWEEN LAW AND REALITY IN MALAYSIA

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Abstract

Parents and guardians have a moral as well as a legal duty to exercise reasonable care and supervision on their children. Unfortunately, whether we realize it or not, there are several acts and omissions committed by these parents or guardians which are detrimental to the child concerned. One such omission is where the child is left without any reasonable care and supervision by his or her parents or guardian. Data and reports show that there are a number of reported cases of children being left without reasonable care and supervision which have resulted in casualties. Most of these reported cases show that the children were either trapped in their own houses or cars as a result of being locked from the outside by their parents or guardian. Due to the increase in the number of such cases, the legislature has made leaving children without reasonable care and supervision by the parents or guardian an offence under the Child Act 2001. Although it is an offence to leave children without reasonable care and supervision, it is sad to note that there are still cases where children are being left unattended for various reasons. Hence, the purpose of this paper is to examine the abovementioned problem as well as to look at the same from the perception of the respondents based on the research that has been conducted.

Case One

[The Star Online](#) > Nation

Sunday October 7, 2007

MYT 6:49:19 PM

Baby dies in fire, 2 brothers escape

By RASHITHA A. HAMID

KUALA LUMPUR: A one-and-a-half-year-old baby girl died after a fire razed her home at the Jalan San Peng flats near here on Sunday afternoon. Neighbours managed to save the baby's two brothers, aged three and four, who were also in the house by pulling them out through the window in the 1.35pm incident.

It is learnt that the mother, a divorcee, who had gone out to meet her friends had locked her three children in the house before leaving for work. Pudu Fire and Rescue department operation officer Mohd Ramali Arbai

said his department received a call from the public at 1.37pm and fire engines reached the scene in two minutes. "We found the baby's remains near the bed in the main room with blisters on her hands, legs and face," he said when met at the scene.

According to Mohd Ramali, his officers took about 20 minutes to put out the fire. The department is still investigating the cause of the fire. The body of the baby girl has been sent to the Kuala Lumpur Hospital for a post-mortem.

Case Two

[The Star Online](#) > Nation

Monday September 3, 2007

Boy falls to his death – just 15 days before sixth birthday

KUALA LUMPUR: A boy fell to his death from the eighth floor of a block of flats in Kg Baru Ayer Panas, Setapak, here, yesterday – 15 days short of his sixth birthday.

Iskandar Zamri, is said to have slipped and fell after climbing onto a washing machine located at the back balcony of the flats at 7.45pm yesterday. His mother, Siti Sofeah Zakaria, 33, said her husband Zamri Abd Rashid, 39, left Iskandar with his younger brother Hakimi, three, at home to fetch her from a shopping centre in Chow Kit where she worked.

"I had planned to celebrate his sixth birthday on Sept 17 as he had reminded me of it several times recently. "I had also bought some Hari Raya clothes for him and planned to celebrate Hari Raya with three of my other children, who are with their grandmother in Kota Baru," she said at the Hospital Kuala Lumpur mortuary last night.

Zamri said they moved into the flat about two months ago after staying in a squatter area in Jalan Semarak. "Our life has been better since we moved here, but now this has to happen to us," he said.

Sentul OCPD Asst Comm K. Kumaran said the case had been classified as sudden death.

The above scenarios represent only a tip of the iceberg of reported cases where children were left without reasonable supervision or care by their parents or guardians for various reasons. In the first scenario, the children were left on their own because the mother had to go to work. The facts of the case show that the mother is a single mother and has to juggle between taking care of the children and also working. In the second scenario, the child was left alone as the father needed to fetch the mother. In another reported case, a child aged 3 years old was

left with her 5 year old brother in a car as their father went fishing.¹ It was reported that the brother played with a cigarette lighter which resulted in their father's car burning. The unfortunate girl was trapped in the car. The passersby could not get her out on time. All three cases discussed above resulted in the death of the children. What is more disheartening is that the children were aged between 1 1/2 years to 6 years old. In these cases also, all the children were left with either their brother or sister aged below the age of 7 years.

What we can gather from these incidents is that the act of the parents or guardians of leaving their young children without reasonable supervision or care resulted in serious consequences to the children. The worst situation would be where it results in the death of the innocent one. Children who were left without reasonable supervision and care either at home or in the car are also subjected to various risks including being taken for a ride by criminals aiming for the vehicle, physical injuries, rape by strangers etc. These incidents have left us with several questions that need to be addressed. First, the law governing child protection in particular, has to make sure that the parents or guardians did not leave their child unattended to or without reasonable supervision. Secondly, what is the parents' and guardians' perception regarding leaving their children unattended to or without reasonable supervision?

Introduction

Previous research and data show that most of the abuse and neglect cases involving children occurred in their very own home. These findings contradict the general perception that the home is the safest place for everyone, especially children. This is due to the fact that at home, children are protected by their parents or guardians. In almost all societies in the world, it is normal to expect that parents and guardians should care and protect children under their care from all sorts of dangers or harm. Apart from a moral duty to protect their children, in most of the countries today, parents and guardians are under a legal duty to protect and care for their children. Laws² whether it is domestic or international

¹ See Utusan Malaysia dated 13 October 2006 titled ‘Pengail cari umpan, anak rentung dalam kereta’.

² Lord Taylor in the case of *Emery* (1992) 14 Cr App R (S) 394 said that the main duty of parent or guardian is to protect children under their care. In Capital Territory, Australia, section 17 of the Children and Young People Act 1999 (CT) defines *parental responsibility* as: “*all the duties, powers and responsibilities parents ordinarily have by law in relation to their children* and include responsibility for the day-to-day or long-term care, welfare and development of the *child* or *young person*.”

In New Zealand, the failure of parents or guardian to take care their children is an offence. Section 152 Crimes Act 1961 (New Zealand) provides:

152. Duty of parent or guardian to provide necessities

- 1) Every one who as a parent or person in place of a parent is under a legal duty to provide necessities for any child under the age of 16 years, being a child in his actual custody, is criminally responsible for omitting without lawful excuse to do so, whether the child is helpless or not, if the death of the child is caused, or if his life is endangered or his health permanently injured, by such omission.

conventions such as the Convention on the Rights of the Child³ (CRC) acknowledge that parents and guardians have responsibilities over children under their care. For example, the duty to provide maintenance, protecting and giving education to children under their care. In Malaysia, Section 92 of the Law Reform Act (Marriage and Divorce) 1976⁴ provides that it should be the duty of a parent to provide maintenance to the child of a marriage.⁵ Section 93(2) of Act 164 confers the court power to order the mother to pay maintenance to the child after the court is satisfied that having regards to her means it is reasonable so to order. Further, section 3(1) of the Married Women and Children (Maintenance) Act 1950 (Revised 1981)⁶ provides that if any person neglects or refuses to maintain his legitimate child, the court may order him to make a monthly allowance for the maintenance of the child. Section 3(2) of the said Act extends this duty to an illegitimate child as well. Meanwhile, anybody who has been appointed as a guardian to a child holds the responsibility towards the welfare, health and education of the child.⁷ At the same time, parents or guardians are also responsible to make sure that children under their care get their early education which has been made mandatory.⁸ Failure on the part of the parents or guardians

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- (2) Every one **is liable** to imprisonment for a term not exceeding 7 years who, without lawful excuse, neglects the duty specified in this section so that the life of the child is endangered or his health permanently injured by such neglect.

³ Article 18 of the CRC provides:

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

⁴ Act 164.

⁵ Section 87 defines the meaning of "child" as referring to the meaning of "child of marriage" as defined in Section 2 who is below the age of eighteen years. "Child of the marriage" is defined by section 2 of Act 164 as 'a child of both parties to the marriage in question or a child of one party to the marriage accepted as one of the family by the other party; and "child" in this context includes an illegitimate child of, and a child adopted by, either of the parties to the marriage in pursuance of an adoption order made under any written law relating to adoption; Where a man has accepted a child who is not his child as a member of his family, he has a duty to maintain the child. Section 99(1) of Act 164 provides:

- (1) Where a man has accepted a child who is not his child as a member of his family, it shall be his duty to maintain such child while he or she remains a child, so far as the father and the mother of the child fail to do so, and the court may make such orders as may be necessary to ensure the welfare of the child:

Provided that the duty imposed by this subsection shall cease if the child is taken away by his or her father or mother.

⁶ Act 263.

⁷ Section 3 of the Guardianship of Infant Act 1961 (Act 351).

⁸ Section 29A(2) of the Education Act 1996 (Act 550).

to put their children in schools is an offence and they can be fined not exceeding RM 5,000.00 or imprisonment not exceeding 6 months or both.⁹

Legal Provisions

What is the meaning of ‘child neglect’? ‘Child neglect’ includes physical neglect, medical neglect, supervisory neglect, emotional neglect, educational neglect and also abandoning.¹⁰ However in this article, the writers will discuss about supervisory neglect which is one of the main problems of child neglect. Leaving children without reasonable care or supervision not necessarily refers to cases where a child is left unattended at home. It also covers cases where children were left unattended in vehicles. In most countries, it is an offence to leave a child without reasonable supervision and care. In New Zealand, section 10B of the Summary Offences Act 1981 provides:

Leaving a child without reasonable supervision and care.

Every person is liable to a fine not exceeding \$2,000 who, being a parent or guardian or a person for the time being having the care of a child under the age of 14 years, leaves that child, without making reasonable provision for the supervision and care of the child, for a time that is unreasonable or under conditions that are unreasonable having regard to all the circumstances.

In New South Wales, Australia, section 231 of the Children and Young Persons (Care and Protection) Act 1998 provides for the offence of leaving children and young persons unsupervised in motor vehicles.

231 Leaving children and young persons unsupervised in motor vehicles

A person who leaves any child or young person in the person’s care in a motor vehicle without proper supervision for such period or in such circumstances that:

- (a) the child or young person becomes or is likely to become emotionally distressed, or
- (b) the child’s or young person’s health becomes or is likely to become permanently or temporarily impaired, is guilty of an offence.

Maximum penalty: 200 penalty units.

Section 33 of the Malaysian Child Act 2001 (Act 611) provides:

⁹ Section 29A(4) Act 550.

¹⁰ See also McGuigen, William M dan Clara C. Pratt, “The Predictive Impact of Domestic Violence on Three Types of Child Maltreatment”, (2001) 25 *Child Abuse & Neglect* 869-883 di muka surat 870-871.

Any person who, being a parent or a guardian or a person for the time being having the care of a child, leaves that child-

- (a) without making reasonable provision for the supervision and care of the child;
- (b) for a period which is unreasonable having regard to all the circumstances; or
- (c) under conditions which are unreasonable having regard to all the circumstances,

commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Based on the above section 33 of Act 611, a person who is a parent or guardian is guilty of the offence of child neglect in three situations. First, if he or she leaves that child without making reasonable provision for the supervision and care of the child. Second, leaving the child for a period which is unreasonable having regard to all the circumstances and thirdly, leaving the child under conditions which are unreasonable having regard to all the circumstances. Section 33 of Act 611 provides that the penalty for the above mentioned offence as a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding 2 years or to both.

The issue that arises is whether the punishment mentioned in this section is adequate, taking into account the seriousness of the offence. As discussed earlier, the consequences of living children without reasonable care and supervision may be drastic such as resulting in the death of the children. Therefore, the question is whether Parliament should amend section 33 of Act 611 to increase the penalty mentioned therein?

Age Factor

Act 611 defines children as those below the age of 18 years. The question that arises is whether the gravity of the offence under section 33 of Act 611 in the following scenarios is the same?

Scenario 1: A parent leaving his or her 17 year old child at home without reasonable supervision and care.

Scenario 2: A parent leaving his or her 7 year old child at home without reasonable supervision and care.

In Illinois, United States of America, the Juvenile Court Act of 1987 provides that it is an offence to leave a minor under the age of 14 years old at home without supervision for an unreasonable period of time without regard for the mental or physical health, safety or welfare.¹¹ In the writers' opinion, Act 611 should clearly

¹¹ Section 2-3(1)(d) of the Juvenile Court Act of 1987 (Illinois). Retrieved from <http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=070504050HArt%2E+II&ActID=1863&ChapAct=705%26nbsp%3BILCS%26nbsp%3B405%2F&ChapterID=50&ChapterName=COURT>

lay down a cut off age for children being left without reasonable supervision and care.

While in Maryland, United States of America, a child aged below 8 years old may not be locked or confined in a dwelling, building, enclosure, or motor vehicle while the person charged is absent and the dwelling, building, enclosure, or motor vehicle is out of the sight of the person charged unless the person charged provides a reliable person at least 13 years old to remain with the child to protect the child.¹² The issue that arises at this juncture is whether the Malaysian Act 611 should contain a similar provision as above?

Perception of ‘Parents to be’ regarding leaving their children unattended or without reasonable supervision

The earlier discussion in this paper shows that a child left unattended faces various serious implications especially concerning their safety. At the same time, parents or guardians also hold the legal and moral responsibility towards children in their care. In order to answer the question, a scenario was posed to the respondents who are ‘parents to be’. The respondents attended pre-marriage courses organized by the relevant authorities in the district of Petaling in Selangor and Dungun in Terengganu.

Scenario One

You stay in a housing estate. Your neighbour (Tom) and his wife work in a company in KK Town. One day while you are attending to your garden, you see your neighbour’s child aged 10 years old. He tells you that only he and his two younger sisters aged 5 and 7 years old are in the house. According to your neighbour’s son, he is used to that situation.

1. Has Tom committed any offence?
 1. Yes
 2. No
 3. Not Sure

Table 1: Leaving Children without Reasonable Care and Supervision is an Offence

[S&SectionID=60384&SeqStart=2300000&SeqEnd=6600000&ActName=Juvenile+Court+Act+of+1987%2E](#), 14 April 2009.

¹² Section 5-801 Maryland Family Law. Retrieved from <http://law.justia.com/maryland/codes/gfl/5-801.html>, 14 April 2009.

District Responses By the respondents	Petaling		Dungun		Total	
	n=143	%	n=200	%	n=343	%
Yes	92	64.3	110	55	202	58.9
No	32	22.4	60	30	92	26.8
Not Sure	19	13.3	30	15	49	14.3
Total	143	100	200	100	343	100

The findings in Table 1 show that 58.9% of the respondents are of the opinion that Tom's act of leaving his children aged 5 and 7 years old without reasonable care and supervision is an offence. 26.8% of the respondents are of the opinion that Tom's action is not an offence. 14.3% of the respondents are not sure whether Tom's action is an offence or otherwise. This means that more than 40% of the respondents are of the opinion that Tom's action is not an offence or not sure whether it is an offence or otherwise. This indicates that the respondents are of the opinion that the act is not serious that warrant a stern action. This finding is worrying as the responses came from potential parents. It is submitted that if the potential parents are of the opinion that Tom's action in leaving his 5 and 7 year old children without reasonable care and supervision is not an offence, then there is a high possibility that they will do the same in the future.

At the same time, if their respective neighbours did the same act, there is a high possibility that they will not do anything about it as they are of the opinion that it is not an offence to leave children aged 5 and 7 years without reasonable care and supervision. There is a need to identify the reasons behind the responses of the respondents. This is due to the fact that if the reasons have been identified, corrective measures can be taken to address the issue. To find out the reasons why some of the respondents were of the opinion that Tom's action is not an offence, questionnaires with multiple choice answers were given. Their responses are shown in Table 2.

Table 2 : Reasons why leaving Children without Reasonable Care and Supervision is not an Offence

District Reasons Given by the Respondents	Petaling*		Dungun+		Total	
	n=25	%	n=54	%	n=79	%
It is a normal thing	6	24.0	14	25.9	20	25.3
The children are not being left alone	4	16.0	20	37.0	24	30.4
The children can still communicate with their	12	48.0	17	31.5	29	36.7

parents via telephone						
Other reasons	3	12.0	3	5.6	6	7.6
Total	25	100	54	100	79	100

* Seven respondents in District of Petaling did not answer this question.

+ Six respondents in District of Dungun did not answer this question.

The findings in Table 2 show 25.3% of the respondents are of the opinion that 'it is normal' to leave the child without reasonable care and supervision.¹³ 30.4% of the respondents are of the opinion that the children are not left alone. 36.7% of the respondents are of the opinion that the children can still contact their parents by telephone. Thus, to these respondents, it is not an offence to leave children aged 5 and 7 years old without reasonable care and supervision. It is submitted that the respondents' perception about this issue may be as a result of local culture and practices. At the same time, there is a possibility that the respondents themselves have been left without reasonable care and supervision at the same age as the children above which has led them to think that it is permissible to leave children aged 5 and 7 years old without reasonable care and supervision. According to John M. Elliot, Tong Chee Kiong and Patricia M. E. H. Tan:¹⁴

Children grow up within cultures, and what society regards as desirable and values will to some extent determine not only acceptable practices but also what is needed to help the child thrive in that society. Socialization does not occur in a vacuum.

Discussion

The findings in Table 1 show that the percentage of the respondents who are of the opinion that it is not an offence to leave children aged 5 and 7 without reasonable care and supervision is relatively high taking into consideration that they are yet to become parents. Previous research shows that among the factors that contribute to cases of child abuse and neglect is the culture and practices of the society.¹⁵ It is submitted that we cannot rule out that culture and practices have contributed to the perceptions of the respondents who were of the opinion that it is not an offence to leave children aged 5 and 7 years old without reasonable care and supervision. The cases discussed in the earlier part of this article show that the implication of the parents' action in leaving their children without reasonable care and supervision is as serious or more serious if one were to compare it with other types of abuse.

¹³ From the group of respondent that were of the opinion that to leave children aged 5 and 7 without reasonable care and supervision is not an offence.

¹⁴ Elliot, John M, Tong Chee Kiong dan Patricia M E H Tan, "Attitude of the Singapore Public To Action Suggesting Child Abuse" (1997) 2 *Child Abuse & Neglect* 445 – 464.

¹⁵ Purvis, Mayumi and Tony Ward, "The Role of Culture in Understanding Child Sexual Offending: Examining Feminist Perspective", (2006) 11 *Aggression and Violent Behaviour* 298 – 312.

It is submitted that, it is timely for the government to put it on paper that the act of parents or guardians who leave children under their care without reasonable care and supervision is as serious as any other type of child abuse and neglect. Thus, the offence of child neglect in section 33 of the Child Act should be treated as serious as any other type of child abuse and neglect which attracts the maximum punishment of RM 20,000.00 or 10 years imprisonment or both.¹⁶ This is due to the fact that the implication of the omission is serious where the life of a child is at stake. It is submitted that the law should be amended to reflect how serious the offence is. At the same time, the findings also indicate that the right message should be sent to the parents or ‘parents to be’ that leaving young children without reasonable care and supervision is an offence even for a short period of time. Public should also be educated so that they will re-act if they know that the children in their community have been left without reasonable care and supervision.

Conclusion

To some people they consider it as fated. Yes, one would agree that what had happened was fated. However, the blame should not be put on fate alone. We can change the fate provided we try to. As the saying goes “Prevention Is Better than Cure”. Why do we have to wait for something drastic to happen first and then start pointing fingers at one another or put the blame on fate? All the parties concerned should join forces in making sure that children are never left alone without reasonable care and supervision. Parents who have neglected their children as mentioned in any of the three situations under section 33 of Act 611 should be punished so that the other parents or parents to be will know that they would also face the same consequences if they commit this offence. It is not the intention of the legislature to punish parents who are grieving for their child’s misfortune. The purpose is to protect children from being left without reasonable supervision by the parents or guardians. It should not be forgotten that children depend solely on their parents or guardians to protect them. Therefore, it is logical for the law to impose sanctions against those who have failed in protecting their little ones.

¹⁶ See section 31 of Act 611.