Can Psychology Serve as a “Security Factor”? - Incest Survivors as a Test Case of the Connection between Psychology and the Criminal-Tort Reality

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Abstract

Today there is a general consensus that victims of crime benefit from psychotherapy, particularly when they have experienced emotional trauma. While legal systems in previous eras did not recognize the emotional difficulties borne by the victims, today they do so almost routinely. It has widely been assumed this understanding of what the victims of serious crimes experience would translate into important legal benefits as well.

We test this assumption through an analysis of the test case of female victims of childhood incest. Contemporary psychology casts these women in a radically new light, one which has brought about legal recognition of the fact that memories of abuse can be repressed until adulthood or even years after the victim reaches maturity. Recent years have seen the development of legislative amendments to lengthen the statute of limitations in both torts and criminal cases, in Israel and elsewhere.

The situation, however, is not as rosy as one might have hoped and expected. The legal system has not become dramatically more receptive to the victims of childhood sexual abuse, either in terms of sentencing in criminal cases or monetary compensation in tort claims. This paper asks why and how psychological insight can foment a bona fide legal revolution.

We conclude that psychology on its own cannot effect far-reaching legal change in favor of the victims of crime without the establishment of a legal-social bond. The

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holistic multi-system approach is an appropriate vehicle to disseminate the new psychological understanding of incest to the victims, and thus ensure that psychology will be of true benefit to the legal system.

A. Introduction

B.

C. The Test Case: Women who Survived Childhood Incest
1. Incest in Common Law and American Law

D. Psychological-Legal Background
1. Incest in Israeli Law

E. Psychological-Social Change: Understanding the Phenomenon of Delayed Reporting
1. Long- and Short-term Influences
2. Delayed Memory: A Critique

F. Legal Change Following Psychological-Social Change: One Step at a Time?
1. Criminal Law in Israel
2. Dealing with the Limitation Periods in the United States of America

G. Psychology and the Law, in Israel and around the World
1. The Compensation Problem
2. Civil Compensation

H. The Connection between Psychology and Criminal-Tort Reality

A. Introduction

Changes in psychological perceptions frequently help advance the tort and criminal law. Witness, for example, the legal recognition of emotional damages to those injured in road accidents, the principle of diminished capacity in manslaughter, and the recognition of the absence of emotional care for mentally ill prisoners as a basis for a law.

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suit.\textsuperscript{4} It often appears as if these psychological changes are sufficient to remedy a legal problem. This assumption would seem to be logical and obvious, and is supported by numerous examples of legal changes that arose in the wake of widely accepted social changes.\textsuperscript{5} Nonetheless, it is difficult if not impossible to determine its veracity without a large-scale empirical study. This paper does not attempt to provide an unequivocal answer to the question of whether a perceptual change in human psychology leads directly to legal change; instead it focuses on one test case, namely how the legal framework addresses the issue of women who were the victims of childhood incest.

The first section is devoted to the historical background of incest, the frequency of the crime, and social issues that relate to incest survivors. Our analysis is largely descriptive, and aims to define the problems the victims of childhood incest have faced in the past, primarily on a social level. We present data about incest in general and specifically female victims of child incest, discuss the growing awareness of incest, and look into why incest seems to be on the rise.

We then turn our attention to the legal-psychological assumptions that prevailed until recently. Our analysis will reveal the essential connection between the traditional understanding of incest, the legal arrangements which failed to recognize the damage to the victims, and the fact that many women report the crime many years after the fact. We also discuss the important relationship between the psychological understanding of incest and the fact that the legal system took no action for many years, even after incest was a well-known and oft-discussed issue. We explore the interrelationships between the


\textsuperscript{5} In the United States, this is especially common. In 1994, for example, a seven-year-old girl was raped and cruelly murdered by a sexual offender who had served his sentence. Another girl was murdered in late July of that year. By October, the State of New Jersey had passed Megan's Law, which requires convicted sexual offenders who desire to live in a certain area to inform the relevant local authority. Similar laws were later passed across the United States, and there are even federal laws on the matter. See Teichman, D. (2005). ‘Sex, Shame, and the Law: an Economic Perspective on Megan’s Laws.’ \textit{Harvard Journal on Legislation} 42(79): 355. The immediate response of the legislature in passing legislation against an offence which is in the public spotlight at the time is not uncommon; people in the field have dubbed this type of offence as a \textit{crime de jure}. Another example is anti-carjacking legislation, which was passed after an especially shocking case in which a woman with a young baby was killed. The author mentions that there was no legal reason for changing the law since the existing statutes provided harsh punishment for those indicted with such crimes. See Beale, S. S. B. (2005) ‘Essay: The Many Faces of Overcriminalization: Essays: From Morals and Mattress Tags to Overfederalization.’ \textit{American University Law Review}. 54(747): 756.
psychological understanding of incest, the legal-normative situation, and the social perception. Finally, we discuss the damage the victims of incest have incurred and ask how it is possible that social change has been so slow in coming, despite the acknowledgement of the tremendous toll incest takes on its victims, something which is clear even without sophisticated psychological analysis.

Next, we analyze changes in the psychological understanding of incest victims in general, and specifically as regards late reporting of acts women experienced as children. We will see a revolution in the psychological portrait of incest, together with a rise in late reporting, as shown by data supplied by aid organizations and governmental agencies.

Section D introduces the social change that followed the psychological one, and discusses the relationship between the two. We discuss the evolution in our understanding of the phenomenon of late reporting, together with a heightened recognition of the tremendous damage that incest victims incur, especially those who endure life-long abuse.

In Section E, we present the legal changes that arose in the wake of the new psychological understanding of incest, in Israel and around the world. The primary focus here is the recognition of the phenomenon of late reporting in legislation and court rulings. We analyze the connection between the psychological recognition of the damages suffered by adult victims and the different juridical trends, including victims' rights. This section will also relate to the question of whether social change (as a protected value) could provide sufficient protection of these without the accompanying psychological and legal changes.

One might have expected a change in the psychological perspective of incest to have engendered a real revolution in the realm of victims' damages, but unfortunately this has not been the case. In the penultimate section of the paper, we present the legal and structural elements that have failed to protect female victims of child sexual abuse. The main reason behind this failure – as in other fields where psychology and law intersect – is that psychological change and legal change must somehow be connected to be effective.
The final section of the paper, which draws upon the analysis and the findings presented earlier, shows how supportive structural tools can bridge between psychology and the requisite legal change. We explain how these structural tools can bring to fruition the tremendous potential which lies in this psychological change, and can eventually lead to a wide-ranging legal defense of adult victims of childhood abuse. The analysis of our test case is placed in the context of general conclusions regarding the relationship between psychology and law.

B. The Test Case: Women who Survived Childhood Incest

Before we delve into our test case, we must briefly relate to a similar phenomenon which we unfortunately encounter on a daily basis, namely domestic violence. The importance of this discussion lies in the many commonalities of domestic violence and incest. In both, the abuser acts from a position of power – and in order to establish a position of power – in the domestic setting. Studies reveal that a violent father or partner is up to nine times more likely to sexually abuse his children than is a non-violent father or partner, and a girl living in a house where domestic violence occurs is six times more likely to be a victim of incest than are other girls. Much like the victim of incest, girls have few inner resources for dealing with domestic violence.

Psychological studies show that young victims of domestic violence and children exposed to domestic violence are prone to a range of problems, even if they are not victims of incest. These include educational difficulties and deficient social functioning during childhood, as well as mimicking violent behavioral patterns when they grow up and when they themselves establish families. It comes as little surprise that the most severe problems – problems which can last a lifetime – are diagnosed among those

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8. This is the assumption that underlies extending the limitation period for lawsuits relating to incest, as will later be discussed in depth. See: Napoli, L. (1997). ‘Tolling the Statue of Limitations for Survivors of Domestic Violence who Wish to Recover Civil Damages Against Their Abusers’. *CIRCULES BU. W. J. L. & SOC. POL. POL.* 5(53): 56.

children who encounter the double whammy of both domestic violence and incest.\textsuperscript{10} Although the social perception of domestic violence and incest is almost equally negative, proof of damage is usually required for domestic violence to be considered criminal. This is not the case with incest, where the social assumption is that proof that the deed occurred is sufficient, and proof of damage is not required.\textsuperscript{11} In this section, and throughout, we will investigate the origin of this difference, its legal significance, and the ways it is reflected in the legal system in Israel and the United States. Most important, we will ask how it can be utilized as a basis for instituting widened protection for incest victims.

Different societies and cultures understand the concept of “incest” in different ways. Perceptions of what incest is and its relevance for society have developed with time, in accordance with the moral values that mark each place and era. The lexical definition of the term is “Wrongful sexual intercourse, legally forbidden sexual relations between family members.”\textsuperscript{12}

Incest usually defines sexual relations between people who are forbidden to marry, whether by law or ethics. This definition focuses on relations of familial closeness.\textsuperscript{13} In the professional literature, incest is defined in several ways. The choice of definition reflects the writer’s own stance and that of his or her time and society. The various definitions address the character of the sexual contact,\textsuperscript{14} the extent of familial closeness,\textsuperscript{15} the age gap between the attacker and the victim, and the effect of the abuse. Some definitions grant significance to the child’s loss of trust in the adult.\textsuperscript{16} Most relate to first-degree family relations (father, mother, sibling or person acting in loco parentis), although some also include the wider circle of second-degree familial relations

\begin{flushleft}
\textsuperscript{10} Id.
\textsuperscript{11} Id., at 68-69.
\textsuperscript{13} Cohen, T. (1988). \textit{Incest: Abuse of Children by their Family Members, Understanding the Phenomenon and Courses of Treatment}, 2. [In Hebrew].
\textsuperscript{14} Id. This includes acts such as kisses, petting, exposing, oral contacts, masturbation, sodomy, and full penetration. The definition of the character of sexual contact is not consistent. A wide definition will cover any sexual behavior between family members that is considered to be forbidden (including masturbation, watching pornographic films, exposure, and seduction) and a more narrow one will be limited to actual sexual relations.
\textsuperscript{15} Id.
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(grandparents, step-family members, uncles and cousins). As with any other criminal offense, the legal rules concerning incest are derived from the social definition of the phenomenon.

Incest is not an uncommon theme in the Old Testament. In the Book of Genesis alone, Abraham marries his half-sister, Sarah, Lot's two daughters are impregnated by their father, and Jacob marries his two nieces, Leah and Rachel, themselves sisters. Later Books of the Bible tell the story of Amnon, who had sexual relations with his sister, Tamar, and Amalek, the disgraced nation which practiced incest for generations. It is of note that Noahides, who are required to perform only seven commandments, were not excused from the prohibition on incest.

The Talmud lists the women who are sexually out-of-bounds for reasons of familial relations. Traditional Jewish sources deal quite severely with incest, and punishments include stoning, burning and divine punishment by untimely death or eternal excommunication. Bible commentators claim that the Divinity's limiting a person's life to 120 years and the Great Flood were both responses to incest. Commentators are agreed that incest laws became more complicated and wide-reaching during the period of the Bible. While the laws in the Bible speak of men, it appears in Leviticus that woman bear the same degree of criminal responsibility as men do.

18 Genesis 11, 31.
19 Genesis 19, 31: And the older said to the younger: Our father is old and there is no man in the country to come upon us as the way of the entire land, we will go give our father a drink of wine and sleep with him and live from our father's sperm. And both of Lot’s daughters were impregnated from their father.”
20 Genesis 29 12-14: “And Jacob told Rachel that he is her father’s brother and Rebecca’s son, and she ran to tell her father. And when Laban heard the rumor of Jacob his sister’s son he ran to him. And he brought him to his home and Laban said to him, you are me and my flesh, and he sat for a month.”
21 *Samuel* 2, 13 1: “And Amnon desired to act sick for his sister Tamar. And she turned to him for food, and he held her and told her come sleep with me my sister. And she said to him my brother do not torture me, because that shall not be done in Israel, do not do this wrong. And now speak to the king that he may not keep me from you and he would not listen to her and he held her and tortured and slept with her.” Tamar asks her brother to get King David's approval, without which relations between brother and sister were considered shameful.
23 *Biblical Encyclopedia – Collection of Knowledge on the Bible and its Times*, ed. H. Tadmor (1972), at 390. [In Hebrew].
24 *Id*, at 388; also see Leviticus 20.
Incest law underscores the patriarchal character of the family. For example, one's father’s brother’s wife is considered beyond bounds, while one's mother’s brother's wife is not. At the top of the list of prohibitions is a son's having sexual relations with his mother, which would tip the balance of power in the family and/or infringe upon his father’s rights. Sexual relations with a sister or between parent and child (when the parent initiates the act and not the child) are not expressly forbidden. In effect, the biblical incest laws are primarily concerned with a child conceived from a forbidden intimate relationship. The fact that certain relationships were permissible and others forbidden points to the protected value and the social interest during the biblical period. The society was patriarchal, with punishment imposed on those who threatened the status of the father. Although the ancient ban on incest safeguarded different protected values and a different social interest than contemporary bans do, we can see that even in biblical times, legal prohibitions and criminal sanctions worked to preserve the norms of society.

Almost from the dawn of humanity, people have been fascinated by incest, as evidenced by Sophocles’ *Oedipus Rex*. Incest has not been limited to a particular society, culture or period. Legal and religious prohibitions have developed simultaneously and in conjunction with societal awareness of the issue. The situation today and the establishment in Israel of a criminal prohibition against incest are a case in point.

The cloak of silence, which is part and parcel of the crime, makes it very difficult to establish just how widespread incest is. Statistics indicate that the estimated number of domestic-violence cases far exceeds the number of reports or law suits.

While incest is hardly a new phenomenon, it was newly “discovered” by Sigmund Freud in the mid-1900s. Freud saw incest as repressed wishes or sexual fantasies and estimated the frequency of incest in society is one to a million.

Freud was interested in the psychology that lay behind incest. Sociologists who followed Freud endeavored to supply a normative reason for why incest takes place. They emphasized the need of societies to foster financial and political cooperation between the

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members of different families and argued that the ban on incest is aimed at furthering the processes of socialization. In contrast, functional anthropologists emphasize the importance of the family as a unit that ensures the future of society biologically, culturally, and socially. Sexual relations between first-degree relatives are liable to impair the family hierarchy: A mother can become a sister, an uncle can become a brother, and so on. This can destroy the fabric of the family and adversely affect its ability to function on its own and contribute to the general society.

Legislation to prohibit marital relations between relatives is intended to safeguard the family and promote familial harmony. These laws also serve to protect the family unit from the risk of sexual jealousy between family members. This approach has its origins in judicial decisions which state that laws forbidding incest are required since society can not function in an orderly manner when there is conflict of roles in the family. Many courts justify their decisions by citing their interest in family harmony and protection of the family unit. This rationale is echoed in general Israeli law as well and is crucial for understanding the complex threat to the family unit when a woman chooses to “re-open old wounds” by issuing a complaint against a family member who had sexually abused her in the past.

From the time of Freud until the mid-1970s, the public disregarded and misunderstood the phenomenon of incest, and as a result incest did not benefit from any

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29 *Id.*
33 R. v. McAfee, *Id.* Although both irrational unacceptable, this verdict given in a Tennessee court is an example of a ruling based upon the value of family unity. This is the case of a man who divorced his wife and married her daughter. His marriage to his stepdaughter took place in a state which disallows such marriages, and the two hid their union for fourteen years, during which time they had three children. The case was only discovered because he husband died suddenly, leaving questions of inheritance The Tennessee court found that the widow and her three children could not inherit because the marriage was in violation of state incest laws. The court based its decision on the idea of the “Good Order of Society.” For the decision, see *Id.* at 522-524.
34 In some cases this involves is a ban on family members testifying against criminal suspects. See Paragraphs 3-4 to the Evidence Ordinance [New Version] 1971. [In Hebrew].
special legal attention. This era has even been dubbed the Age of Denial.\textsuperscript{35} It was long held that incest is an exceedingly rare phenomenon, with perhaps one or two cases a year in a society of a million people.\textsuperscript{36} In research from the 1950s into sexual behavior, Kinsey and his colleagues reported a 5.5\% rate of sexual abuse by a family member among 4,441 subjects. Kinsey nonetheless concluded:

Heterosexual incest is more common in the thoughts of clinical psychologists and social workers than in reality. It may be that there are many men who have thought of the possibility of having sexual relations with sisters, mothers are other female family members; but this is not universal, and it is usually limited to certain times during the younger years. The most common incest relationship is between two brothers before adolescence, but even the number of those cases between adolescents or adults is quite small.\textsuperscript{37}

Kinsey and his team underestimated their results, perhaps because of the difficulty people at the time had in coming to terms with incest.\textsuperscript{38} Studies done in the mid-1970s and early-1980s indicated that incest was far more common than Kinsey had believed. Finkelhor, for example, conducted research at six universities in the United States and found that between 10\% and 30\% of girls and 2\% and 9\% of boys were victims of incest; other scholars consider Finkelhor’s figures to be conservative.\textsuperscript{39}

To date, no one has undertaken a comprehensive study of incest in Israeli society, but several small-scale studies seem to indicate that Israel resembles other western countries in that childhood incest is not rare. Tenne found that 25\% of girls at boarding schools for troubled teenagers were victims of incest.\textsuperscript{40} A 1994 study by experts in family

\textsuperscript{35} Armstrong, see footnote 34, at 109-125.
\textsuperscript{36} Weinberg, S. K. (1955). \textit{Incest Behavior}.
\textsuperscript{40} For more see Tene, D. (1992). \textit{Incest Among Distressed Young Women}. [In Hebrew].
Dr. Limor Ezioni

medicine and statisticians\textsuperscript{41} at RAMBAM – a revolutionary Israeli network for research into family medicine – examined the frequency of childhood sexual abuse among Israeli adults. The study took place in 48 clinics in Israeli cities, towns, and cooperative settlements, and included secular and religious Jews and Arabs who see family doctors. The rate of participation in the study was high, 81\%. The data shows a high incidence of sexual abuse\textsuperscript{42} during childhood (31\% among women, and 16\% among men)\textsuperscript{43} and the authors state that the real rate may be even higher, since some victims are loath to report that they had been sexually harassed during childhood.\textsuperscript{44} The researchers state that that although the questionnaire was anonymous, many respondents might not have wanted to volunteer such sensitive information.

According to the study, 45\% of the attackers were acquainted with their victims and 26\% of the female victims had experienced domestic sexual abuse. Coupled with this, only 45\% of the victims had told someone that they had been sexually harassed as children. This unusual study contributes considerably to the field by (a) demonstrating that sexual abuse of children is not rare in Israel, (b) emphasizing the difficulty the victims experience in reporting harassment in a timely fashion, and (c) underscoring the vast number of women who have not yet contacted the law-enforcement authorities.

Scholars in Israel and elsewhere have tried to estimate how common incest actually is. Although their data and conclusions differ, they all agree on one point: Incest, and in particular sexual abuse of children by family members, is a widespread problem.

In the past decade, the rate of incest Israel has been rising steadily. We have seen an increase both in the number of reported cases and the number of victims who have asked for aid. The data shows, however, that there is a discrepancy between the number


\textsuperscript{42} Researchers defined ‘sexual abuse’ as those cases when the a positive response was given to one or more of the five questions concerning sexual experiences identified by professional literature as childhood sexual abuse: stroking of genitalia, exposure of genitalia, genital-oral contact, sexual intercourse, and attempts at sexual intercourse. See Shine et al., \textit{Id.} at 74.

\textsuperscript{43} The researchers note that the frequency of sexual abuse of girls is far higher than the number of files opened at the Israeli police would indicate, despite the fact that this number has grown steadily over the past decade. Analysis of this research in light of data from the Israeli police is to come.

\textsuperscript{44} Shine et al., see footnote 49, at 83.
of petitions to voluntary agencies and welfare offices and the number of files opened by the police and courts. This indicates, among other things, that incest is widespread, that the victims do not have proper access to the law-enforcement system, and that incest has serious ramifications for the individual and Israeli society as a whole.

Over the past decade, a number of social and political factors were instrumental in raising awareness of incest and constructing a modern social value via the ban on incest. Of particular note is the change in the status of the victim in criminal proceedings, a result of developments relating to basic laws, human rights, and the status of children. This had a profound effect on the attitude towards incest.

For many years, the prevailing perception in Israel and worldwide had been that victims' rights were of secondary importance, perhaps one consideration among many that together compose the public interest. Early Israeli legislation gave little heed to the needs of the victim. A notable exception was legislation concerning child witnesses, although it has been argued that even this legislation was not written to protect victims' rights, but rather resulted from the paternalistic view of children characteristic of the legal and social culture in Israel in the 1950s. A second important provision established the option of requiring the criminal to pay the victim compensation as part of sentencing. The payment is enforced as if it was part of a civil decision, and does not affect the victim’s right to be compensated according to any other law.

In 1937, Mendelson began his scientific study of crime victims, and the “science of victimhood” (also known as “victimology”) was born. The science of victimhood achieved academic recognition in the 1970s and today plays a role in social policy, legislation, and law enforcement. This science developed at the same time as the

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46 The Amendment to the Evidence Ordinance (Protection of Children), 1955. [In Hebrew].
47 Sabah & Gal, see footnote 53, at 165.
48 This refers to the Penal Law from 1936. These statutes were replaced in 1954 and later integrated into the Penal Law in 1977. See articles 77-87 to the Penal Law, 1977 (hereinafter: The Penal Law). [In Hebrew].
49 Sabah & Gal, see footnote 53, at 166.
psychological approach moved from repression of the event to the idea that the victims (and especially victims of sexual offences) should be provided with a remedy, as an integral part of freeing them from trauma. Crime victims now have a scientific field of their own.51

A number of factors helped draw attention to the status of crime victims in the criminal system, such as disillusionment with customary sentencing, the establishment of alternatives to the traditional criminal trial, and the burgeoning movements in support of crime victims.52 In Israel, for example, the Coalition of Organizations for Promotion of Crime Victim’s Rights was established in 1998 by the Child’s Safety Council, the Lobby for Women in Israel, and a coalition of organizations which aid the victims of sexual assault and promote of the rights and status of crime victims at large. Later, other organizations, including the Israel Human Rights Center for People with Disabilities and the Coalition of Managers of Emergency Centers and Treatment of Battered Women, joined the coalition.53


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53 On the influence of pressure groups on the legal system see Shapira, Id., at 629. See also Sabah & Gal, footnote 53, at 167.
of victims were instituted in the United States, West Germany, Canada, New Zealand, and parts of Australia.\(^{55}\)

We note the importance of the “constitutional revolution” which came to pass during this period. Many view this as the basis for the approach which sees victims of crime as evidence of the state's failure to fulfill its obligations to protect its residents from harm and safeguard their personal safety. The state, therefore, is obligated to help the victim after the fact, to remedy the injury which it has allowed to be incurred.\(^{56}\) In Israel, the fourth paragraph of the Basic Law: Human Dignity and Liberty, which states that “every man has the right to protection of his life, his body, and his honor,” is considered to relate to victims' rights.

Indeed, the unambiguous message of this Basic Law is that every person has a constitutional right to be protected from harm. New legislation regarding domestic sexual offenses promotes the status of the victim. Article 354 of the Penal Law, which excepts sexual offenses of minors from the statute of limitations, recognizes the emotional, social, and economic damages that are borne by the victims of sex crimes, as well as the victims' need for justice and compensation, even when they do not issue a complaint in a timely fashion.

The second factor is the change in the status of women. The broad-based feminist movement was instrumental in raising public consciousness of women's rights and the modern protected social value via the ban on incest. This is crucial to understanding the whys and what-fors of our area of focus, women who were victims of childhood incest.

The feminist movement made an important contribution to increased awareness of incest and the protected social value as it appears in current legislation. The cooperative, complementary feminist approaches worked to remake the conservative protected value such that it would reflect the new reality, instituting a modern protected value in its stead. While some feminist theories did not focus directly on incest, the feminist movement as a whole made an invaluable contribution to re-forming the modern protected value through


\(^{56}\) CC 253/01 State of Israel v. Adwan (2002). In this case the court recognized a woman’s right to be protected from rape. The court said that the ramifications for the victim should be considered during sentencing of the rapist.
the ban on incest and to raising public and social awareness of the scope and nature of the problem.

Without exception, feminist theories placed women at the front of the social stage. The goal: a woman with a commitment to social issues; a woman who is not subject to oppression, deprivation and or outside control, but instead is autonomous and free, in complete control of her body and life; a woman who will have her voice heard and her place secured in the ever-evolving modern society; a woman who is the object of respect; a woman who can revel in the completeness of body and soul. Without this feminist awakening, it is doubtful whether today it would be possible to try those suspected of incest or to compensate the victims, particularly when they come forth many years after the fact.

We now turn our attention to the psychological-legal background. This analysis will shed light on the ways in which the law attempted to reflect new psychological reality in the field, but unfortunately achieved only partial success.

1. Incest in Common Law and American Law

British common law did not relate to a crime called “incest” until 1908, when Cromwell was in power\(^57\); certain American states had defined the crime earlier than this.\(^58\) The American incest laws were based on state criminal codes and civil statutes which forbade marriage between relatives.\(^59\) American law is based on common law, but

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\(^58\) Bienen, Id., at 1522. An example is the 1978 New Jersey law which set the punishments to be set for those who commit crimes such as incest and sodomy. The law is unusual in that it does not offer a detailed explanation of the deed and its contributing factors, but merely establishes a punishment for an undefined crime. For a comprehensive list of incest laws in the United States, see Herman, J. L. (1980). Father-Daughter Incest, at 219-259.

\(^59\) In fact, the original law forbade sexual intercourse and marriage between relatives, and those in violation were punished. Some states had separate criminal statutes for sexual intercourse and marriage. We see, then, that the basic American incest law, as included in eighteenth- and nineteenth-century American penal laws, forbade both marriage and sexual intercourse between relatives. For example, see the Pennsylvania incest law, 18 Pa. State. Ann. §4302 (West 1997), which forbids marriage and relations between relatives, and Tex. Penal. Code Ann §25.02 (West 1994), which forbids both sexual intercourse and marriage between relatives. Bienen supplies a detailed list. See footnote 65, at 1580-1640.
since common law did not deal with this issue, the Americans had to write specific legislation relating to incest.\textsuperscript{60} State legislatures passed hybrid criminal-civil legislation, forbidding both sexual relations and marriage between relatives.

At the time, the prohibition on incest was not understood as a means to prevent sexual abuse of children by authoritative adults; rather, the protected value was the family unit, the purity of the blood line, and the social order. The public nature of the offense was not merely individual but societal as well.\textsuperscript{61} Offenders were beaten, required to wear garments with the letter “I” sown on, and forced to stand in the central square.

The traditional laws that defined incest also established how the offenders should be punished and detailed the social consequence of the forbidden behavior, including what the community would need to do to cleanse itself and preserve social order.

The colonial family was a patriarchy, with primary importance accorded to financial considerations. Closeness was not necessarily a factor of blood, but rather relations originating in marriage. Marriage was a pillar of the social system, and all other relationships were defined in light of marital ties. The rationale for the ban on intra-familial marriage was not the fear of causing harm to surviving relatives, but rather that of obfuscating the clearly delineated relationship between families. At the time, marriage and the children resulting from the marriage were the basis for property and land ownership, which were themselves the basis for wealth and social status. Anything that could potentially harm that social order, with its well-defined rules of inheritance, land ownership, property and social status, was forbidden.\textsuperscript{62} As a result, the laws at the time were intended to conserve the social structure, and domestic sexual abuse of children became a top priority of legislatures. The supreme protected values were land ownership and intra-familial relations, followed by the desire to prevent biological-genetic harm to surviving relatives. The justification of these principles drew on moral statements and

\textsuperscript{60} Bienen, footnote 65, at 1523. Since there was no common law which could be adopted, the American legislatures legislated according to their beliefs and the biblical bans as expressed in the Book of Leviticus.

\textsuperscript{61} Bienen, L. B. (1984). ‘The Law as a Storyteller.’ Harvard Law Review 98(494). This paper includes the ‘The Return of Martin Guerre’ in which the hero parades before the entire community before being put to death. We see here that the community plays an integral part in Guerre's punishment.

religious beliefs taken from the Judeo-Christian tradition, which, as we saw above, saw this type of sexual behavior as both deviant and exploitative.\textsuperscript{63}

By the turn of the nineteenth century, the traditional laws had changed somewhat, although the social values of marital relations and the family remained a legislative priority. The provisions and suggestions relating to stigmatization, physical punishment, purification, and penance disappeared.\textsuperscript{64} While incest was still considered a serious threat to marriage and the social order, it was not condemned in the same way it had been. Traditional American incest laws rarely required \textit{mens rea}. In those cases where \textit{mens rea} was required, it was limited to knowledge of the forbidden relationship.\textsuperscript{65} There was no requirement for intent to commit a forbidden act, to sexually abuse or attack a child, or to commit rape: The protected social value was the social order via the institution of marriage, and therefore the relevant factor was awareness of the relationship and not the deed itself. The traditional laws were not concerned with bodily harm or individual or personal autonomy.

The primary focus of incest laws was the social interest according to which any extra-marital sexual relations are forbidden or illegal, since the family unit is the backbone of society, and the purpose of the laws was protection of the family. According to these laws, the relationship between the two parties in and of itself made the sexual act wrong. With incest, the parties sinned against the order God created as well as the social order, which marriage and familial and/or blood relationships help foster.\textsuperscript{66} Incest most often took the form of adultery and bigamy. The prohibition against these acts was intended to preserve the value of marriage and prevent sexual relationships between blood relatives, which were said to be “crimes against morality” or “crimes against

\begin{itemize}
\item \textsuperscript{63} Bienen, see footnote 65, at 1536.
\item \textsuperscript{64} Bienen, see footnote 65, at 1532.
\item \textsuperscript{65} See, for example, Ind. Code Ann. §35-46-1-3 (Michie 1996): “Incest: A person over 18 who engages in sexual intercourse or deviate conduct with another person who is known to the person to be biologically related as a parent…” This is a traditional law which requires knowledge of the forbidden relationship. There are many other traditional laws in the United States which require similar intent, for example Iowa Code Ann. §595.19 (West 1993), which states “Incest: A person performs a sex act with another whom the person knows to be related to the person…” and Ala. Code Ann. §13A-13-3 (Michie 1996), “Incest: Marrying or engaging in sexual intercourse with a person he knows to be, either legitimately or illegitimately…” A list of the 21 American states with traditional incest laws and base the \textit{mens rea} required for the offense on knowledge of the forbidden relationship can be found in Bienen, footnote 65, at 1580-1640.
\item \textsuperscript{66} Bienen, footnote 65, at 1535.
\end{itemize}
modesty.”\textsuperscript{67} These epithets and the sanctions imposed on the offenders demonstrate how seriously incest was taken both by society and the legislature.

In the nineteenth century, incest was dealt with within the framework of statutory rape. The inclusion of incest in rape law – and as a sub-category of the most severe sexual offense, to boot – served as a symbolic statement that incest is a\textit{ bona fide} crime, one that involves exploitation of other people. The legislature’s attitude to incest had changed and the prohibition against incest was no longer a means to regulate the marital system, but instead a way to bring justice to the individual victims.\textsuperscript{68} Until the late 1970s, when Americans began to actively petition for changes in the rape law, the vast majority of states still defined incest as a “marital offense” or as sexual relations and marriage between blood relatives. This is the reason that the sentences for incest were much lighter than those for rape of an adult or a child.\textsuperscript{69} The difference lay primarily in the question of consent. Because consent was obtained in advance in incest, the crime was considered to be less severe.

American rape laws drew on common law. In Britain, before the incest law was legislated in 1908,\textsuperscript{70} cases of incest between father and daughter were tried according to rape laws, and so too in the United States. American prosecutors preferred to indict suspects in incest cases according to rape laws, due to the difference in the severity of punishment.\textsuperscript{71} The disadvantage to this strategy was that when incest cases were adjudicated according to rape laws, prosecutors were faced with a number of obstacles, such as the requirement of an immediate report.\textsuperscript{72}

\begin{itemize}
  \item For example, the law in North Carolina treats these offenses as offenses against the public morality. See N.C. Gen. Stat. §14-178, 14-179, 27.7 A.
  \item Bienen, footnote 65, at 1533. Alabama, for example, rewrote the definition of incest in 1977 to combine traditional laws, which primarily protect marriage and the family, with those that prohibit relationships of domestic abuse. The explanatory note for this amendment lists with four justifications for the new definition of incest: 1. Religion forbids relations between relatives. 2. Research in genetics shows that there is a greater likelihood of hereditary problems when parents are related by blood. 3. The psychological and sociological point of view justifies prevention of competition and jealousy inside the family unit when the goal is obtaining family solidarity. 4. It is important to prevent abuse of relations of authority and power inside the family, primarily by the head of the family on whom the others are financially dependant.
  \item Bienen, footnote 65, at 1537.
  \item Punishment of Incest Act (1908).
  \item See Bienen, footnote 65, at 1559. See also State v. Columbus 154 A. 605 (N.J. 1931) and also State v. Hittson, 254 at 2d 1063 (N.M. 1953).
  \item The requirement of immediate report is common in sexual offences and reflects the importance the law accords to protecting men from false complaints. The difficulty with incest is that the victim often
\end{itemize}
Thanks to the similarity between traditional definitions of rape and incest, prosecutors were able to invoke rape laws in incest cases. Both crimes were directed at a social interest meant to organize marriage in society, both were considered crimes of personal status, and both forbade the use of force and the commission of sexual acts upon young children. Statutory rape and incest require proof that full sexual intercourse has taken place. Because the defense in both was based on rape law, great importance was attributed to the victim’s character, reputation, life style, and personal modesty. There are three major differences between statutory rape and incest: the length and course of the sexual activity, the type of coercion involved, and the question of consent.

With incest, sexual contact generally takes place over a period ranging from several months to several years. The most common pattern involves escalation over time. Most incest relations do not begin with violence and physical force, but under a cloak of love or education or sometimes something pleasurable or special. In general, the coercion is gentle and sophisticated. It usually begins at an early stage, and is intended to ensure that the abuser will enjoy an on-going secret relationship with the victim. Violence is rare in incest and is not inherent to the offense.

The most important difference between incest and statutory rape does not lie in the question of consent, for from the outset neither victim consents to the act from her own free will. They diverge in that an incident the child experiences inside the family is qualitatively different from one in which a woman is raped randomly. This is because of the authority the adult wields over the child and the importance the adult has in the child’s life. Many children who grow up in homes where there are elements of sexual abuse will passively submit to the adult's wishes. Like adult rape victims, these children submit to the activity rather than consent to it. These children are ill-prepared for the experience and are often marked by immaturity, dependence and helplessness.
Against this background, incest came to be seen as an exploitative crime aimed against a person. The ban against incest was no longer intended to preserve the social order by disallowing a certain sexual behavior or establishing marital rules for individuals members of society. Instead, the incest ban can be seen as the harbinger of the recognition of incest as a special type of crime, which justifies different treatment for female survivors of child sexual abuse than for “ordinary” rape victims.

Studies in the field of mental health starting at the mid-1900s pay no attention to domestic violence or the fact that violence is a often routine element in the sex life of women and children. For many years, interactions within the family unit were considered to be personal matters. The value placed on privacy worked to stymie awareness, and in fact functioned to make the woman invisible. When the details of a woman's sexual and family life were revealed, the result was humiliation, mocking, and suspicion.

Before the rape law was revised, some American state legislatures defined sexual intercourse with a daughter or sister as a sub-category of the most severe sexual offense. In the United States, typical incest cases involved sexual intercourse between father and daughter and were dealt with in a convoluted legal framework with not one type of legislation but three: a traditional incest law, a traditional rape law, and statutes dealing with the exploitation of children. Indictments of incest could include any one of the three.

The Michigan law which re-defined rape was the first in which incest was a sub-category of the most egregious sexual offense. The law stipulated that the victim had to be between thirteen and sixteen years of age when the abuse took place. It did not speak of “incest” but instead defined a brand-new sexual offense: the commission of sexual acts with a young man or woman age thirteen to sixteen, when the offender is an adult living in the same household as the minor or a relative with authority over him or her. The new incest laws differed from the traditional ones. In Michigan, if the child is less than thirteen years old, the law does not distinguish sexual acts committed by a relative from those committed by any other person, i.e. if the victim is under thirteen, the identity of the offender: is relate in blood…. the offender is in a position of authority.

78 For example, in Alaska first-degree sexual assault was defined as assault that includes sexual penetration of a boy or girl. Alaska State §11.41.410 112 (Michie 1978): “A person is guilty of criminal sexual conduct for engaging in sexual penetration with another person if any of the following circumstances exist: the victim is between 13 and 16 and is a member of the same household as the offender: is relate in blood…. the offender is in a position of authority.”
criminal is unimportant. If blood relatives engage in consensual sexual acts, and both are over the age of sixteen, the law states that no crime has been committed.\textsuperscript{79} A final point is that the new definition was broadened to include sexual acts that do not involve penetration.\textsuperscript{80}

The incest law was changed to reflect the situation in the field, as reported by social workers, therapists, physicians, and legal professionals. In the 1970s, the legislatures had a different understanding of the damage incest wreaks, as expressed in the terminology used to define the new sexual offenses. Moral terms such as “lewd,” “lascivious,” “infamous,” and “unchaste” were replaced by clinical and medical terms, related to the act itself and not to marital status in and of itself. Biblical terms, adultery for example, were replaced by anatomical descriptions of sexual penetration and sexual contact.\textsuperscript{81} The legislators hoped that terminological change would make unnecessary any discussions of morals and guilt; instead the authorities would rely on objective scientific criteria. With the adoption of the medical and psychological terms, incest became an attack on a person, whether male or female. The new legislation uses neutral phrases to describe those involved in the deeds. Terms such as “complainant” and “prosecutor” were used instead of “criminal” and “victim,” language the legislators saw as expressing prejudice, sexism and contempt.\textsuperscript{82}

The new incest laws offered an entirely new approach to the definitions of incest and wrongful behavior as well as attitudes to the amount of proof required, the harm done, and the punishment imposed. It comes as no surprise that the question of what constitutes authority and control in an incestuous relationship was widely discussed in the United States.\textsuperscript{83}

\textsuperscript{79} Of note also is the fact that the new laws do not differentiate between homosexual and heterosexual relations. Forbidden sexual relations between man and women are akin to forbidden relations between two men or two women.

\textsuperscript{80} Bienen, footnote 65, at 1565.

\textsuperscript{81} \textit{Id.}, at 1567.

\textsuperscript{82} \textit{Id.}, at 1568. Adoption of neutral language for victims and sexual offenders was part of a wider strategy of portraying sexual offenses in terms that were more objective, neutral, serious, and clinical. A good example is provided by the labels used to define sexual offenses, such as rape, bodily abuse, incest, and sodomy. Recent legislation instead speaks of “sexual conduct” (Michigan), “sexual assault” (New Jersey), etc.

\textsuperscript{83} For example, the State of Minnesota defines “stand of authority and control” as including every parent and person who functions as a parent and has the rights, obligations, and responsibility of a parent to a child. See Minn. Stat. Ann. § 609.341 (10) (West 1980). The State of Michigan defined a fourth-degree
Today incest is defined as an attack on a fellow human being. We no longer view incest and the sexual exploitation of children as a crime against morality or modesty, or a crime in which the child is responsible, or even as a prohibited act necessary in order to preserve marital and social relations. The traditional definition, based upon blood and family relations, was altered to include familial exploitation, the improper use of authority, and causing damage to another person.

The change in the definition of incest and sexual exploitation sheds light on society's view of the child. Children are no longer considered the property of their parents, but rather independent agents with their own rights. With incest, children incur injury precisely where they should be protected and by the people who are responsible for their physical and emotional wellbeing, and in whom they were supposed to trust. According to the new conception, incest causes damage to a living, breathing, autonomous human being. This definition goes hand-in-hand with protection of the rights of the weak.

C. Psychological-Legal Background

Although it often appears that the ban on incest is universal, this is not in fact the case. A number of different theories have been proposed for why different cultures living in different periods prohibit incest. We now discuss the psychological and legal background of incest, public awareness of the act, and the rationale for establishing the ban on incest as a legal norm.

The psychological theories of incest originated in the mid-1900s. An odd and uniquely feminine emotional illness become the subject of a great deal of research on the part of physicians, writers, and politicians. Physicians originally were of the opinion that it originated in the uterus, and hence the name, “hysteria.” The father of hysteria research was the French neurologist Jon-Martin Sharko. Sharko’s scientific research led to a general awareness of the fact that women suffering from hysteria are not

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hypochondriacs, but rather have an illness with its own set of symptoms, one Sharko called “The Great Neuroses.”

Sharko’s students, Sigmund Freud among them, undertook to study the underlying causes of hysteria. According to Freud, the observation and categorization of hysterical women were not sufficient: It was essential to talk to them. Based on long conversations conducted over a period of a decade, Freud concluded that hysteria is a condition caused by emotional trauma. Unbearable emotional reactions to traumatic incidents lead to an altered state of consciousness, which in itself leads to hysterical symptoms. Thanks to Sharko and his followers, by the mid-1900s, the public recognized “women’s illness” as a condition in its own right and scientists listened with respect to women.

Freud's research into hysteria is especially notable. In his studies on the origins of hysteria, Freud found that sexuality plays an important role in the origin of the illness; this led him to study women’s sex lives. He was shocked by what his patients told him. Many spoke about sexual assault, sexual abuse, and the painful pattern of incest at the hands of close or distant relatives, most often fathers. In 1896 Freud thought he had discovered the source of hysteria. He believed that the traumatic events that women had undergone in childhood accelerated the emergence of hysterical symptoms. Freud became increasingly troubled by the radical social implications of his hypothesis and redirected his research in other directions. In his opinion, hysteria was so common among women that if he assumed that his patients’ stories were true and his theory was correct, then what he called “corrupt actions against children” was not an isolated phenomenon,

86 Harman, footnote 6, at 92.
87 Id., at 23-22.
89 Freud’s teachers, Sharko and Breuer, had their doubts as to the role of sexuality in the roots of hysteria. Even Freud himself was at first opposed to the idea and said: “When I started the analysis of the second patient, the expectation of sexual neurosis as a basis for hysteria was quite far from my thoughts.” See Breuer. J. & S. Freud (1955). *Studies on Hysteria (1893-1895)* §§ 259-260; see also Herman, footnote 92, at 22.
91 In footnote 98 to *Aetiology of Hysteria*, Freud wrote: “I raise therefore the thesis, that at the basis of every hysteria case stands one traumatic event or several events of pre-mature sexual experience, events belonging to the early years of childhood, but they can be restored the psychoanalytical work, despite the many years that have passed since. I think this is an important finding, in terms of finding the main sources in the neuro-pathological field.”
limited to the poor Parisians who had been the original subjects of research into hysteria, but were characteristic as well of the respected bourgeois families of Vienna where he had his practice. This idea was unconceivable and unbelievable.\textsuperscript{92} As a result, Freud abandoned this in favor of the Oedipus theory, which related these stories to fantasy and an assumption about the sexual desires of children toward their parents.

This is the origin of the Freudian denial of the phenomenon of incest. Instead, Freud posited that every boy in his oedipal phase yearns to take his mother as his wife and banish his father, who stands between the boy and the fulfillment of his desire. The model for this theory was, of course, Oedipus, who killed his father and married his mother. Freud saw his patients’ stories as hazy memories of an unresolved Oedipus Complex.\textsuperscript{93} He extended this line of thinking to girls as well, and termed the emotional bond between daughter and father the Electra Complex.\textsuperscript{94}

After discrediting the traumatic-hysteria theory, Freud founded the practice of psychoanalysis. The dominant psychological theory in the following century was based upon the denial of feminine reality. Freud’s retreat from his initial conclusions symbolized the end of the era of heroic hysteria. The important discoveries of the period were quickly forgotten. Public attention was no longer focused on the domestic sexual abuse of girls, and emotional trauma and incest were no longer subjects of scholarly inquiry.

Freud's theory has attracted a great deal of criticism.\textsuperscript{95} Many scholars posit that repressed sexual passion between family members is a biologically based universal. The Freudian approach, which provided the frame of reference, treats incest as the victory of

\textsuperscript{92} Herman, see footnote 92, at 26-27. See also Freud, S. & M. Bonaparte (1954). \textit{The Origins of Psychoanalysis: Letters to Wilhelm Fliess, Drafts and Notes: 1887-1902} , at 215-216.


\textsuperscript{94} More on the psychological phrasing and the professional psychiatric definition can be found in Elitzur, A., Tiano, S. & M. Neuman (1996). \textit{Selected Sections in Psychiatry}, at 321-322. [In Hebrew].

\textsuperscript{95} Russell, footnote 16, at 5-7, describes how Sigmund Freud's and Alfred Kinsey’s legacy was the denial of the incest phenomenon. Russell notes Freud’s view that when incest cannot be ignored, the blame rests with the child for wanting the sexual contact in the first place. See also Herman, J. L. (1981). \textit{Father-Daughter Incest}. Herman is critical of Freud for studying the causes of hysteria, gaining his patients’ trust, and hearing from them about their being sexually abused during childhood by a relative. Freud was uncomfortable with the reality he found, and, in particular, the inappropriate behavior of a respected family man with a job and social status. If he were to accept the phenomenon as presented by his patients, this would mean that incest was not rare and was not related to low social status and poverty, but instead was common in the patriarchal family. Freud's decision to abandon his research into the emotional trauma was viewed as a cowardly act and twentieth-century psychologists attacked him for it. On this matter, see the debate between Mason and Malcolm: Malcolm, J. (1984) \textit{In the Freud Archives}. 
the Id over the Superego and its system of norms and prohibitions. Research into traumatic neurosis regained its place of importance in the years following the First World War, with studies that diagnosed veterans and the wounded as suffering from a syndrome from the traumatic-neurosis group. Psychologists gained new insights into traumatic disturbances, but limited their work to the emotional effects of war on veterans. It took the women's liberation movement in the 1970s to convince psychologists that the most common post-traumatic disturbances are not found among male veterans, but rather among women in their day-to-day lives, living in their own homes among family members. Studies from the 1970s underscored how real these experiences were — the same ones that Freud a century earlier had depicted as mere fantasies. These new studies proved that sexual assaults on women are endemic. Female psychology took the limelight, and the authors of studies of domestic violence and sexual harassment of children “rediscovered” the emotional-trauma syndrome. Together, these studies raised awareness of domestic sexual offenses, developed new methods to treat the psychological problems caused by incest, and gave new life to Freud’s initial theories of incest.

The emergence of these psychological theories of incest went hand-in-hand with the development of the legal normative ban on incest. The situation in Israel is a case in point. Israel had no legal ban on domestic sexual offences during the Age of Denial. For a long period, the Israeli penal code treated domestic sexual offenses in the general framework of sexual offenses. Only in 1991 did the criminal codex relate directly to domestic sexual offenses.

The historical-legal background of the ban on incest helps us to identify and appreciate the protected value that is intrinsic to society and contemporary social norms.

1. Incest in Israeli Law

The criminal code of the State of Israel devotes a great deal of attention to sexual offenses, considered both unconscionable and anti-socialist acts. Far-reaching changes

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96 For more on the history of the phrase “emotional handicap” and studies of people injured in war and by sexual violence, see Bleich, A. & Z. Solomon (2002). Emotional Handicap: Medical, Social, Legal and Rehabilitation Aspects 9-26. [In Hebrew].
have occurred in this field in recent years. In 1936,\(^97\) during the British Mandate Period, cases of abuse within and outside of the family were not handled legislatively. By the late 1970s, the legal system in Israel had begun to emphasize the importance of protecting victims of domestic violence and sexual abuse. The 26\(^{\text{th}}\) amendment to the Israeli Penal Law, the Law for the Protection from Abuse of Minors and Helpless Persons, was passed in November, 1989. The amendment protects minors in two ways: by defining abuse as a punishable offence and by establishing the requirement to report the abuse of minors to the authorities.\(^98\) A special law was legislated to broaden protection from domestic injury.\(^99\) The following July, the Israeli Penal Law was amended again, and the new law contains the first definition of incest as a separate and especially severe criminal offence.\(^100\) Incest is also the subject of Article 368C of the Penal Law, which discusses “abuse of a minor or a helpless person.”

The definition of incest includes physical, sexual, or emotional abuse of a minor. Abuse of minors by those responsible for them is considered even worse than abuse by strangers. Until the passage of these amendments, the Penal Law did not distinguish between sexual abuse by family members and by others, and those accused of abusing family members were tried for general sexual offenses.

The changes were intended to send a new message, as exemplified by the words used. Starting with the passage of the 22\(^{\text{nd}}\) Amendment of the Penal Law, the crimes enumerated in Articles 345-353, i.e. Section 10, Part 5, the offenses were no longer called “moral offenses” but rather “sexual offenses.” This change is not merely semantic\(^101\); it is an unambiguous proclamation that incest is not a matter of immoral behavior but rather of sexual behavior without consent.

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\(^97\) The State of Israel’s penal code is based upon the Cypriot penal law left behind by the mandatory government, and the Cypriot law is based upon the provincial code constructed in Australia about a century ago. See Shachar, Y. (1979). ‘The Sources of the Penal Law Command, 193.6’ Studies in Law 7(75). [In Hebrew].

\(^98\) Penal Law (amendment number 26), 1989.


\(^100\) Penal Law (amendment number 30), 1990.

\(^101\) This can be seen in the explanation that accompanied the original bill on the subject, Penal Law bill (14th amendment), 1980. HH 147. [In Hebrew]. The draft that was first brought to the Knesset stated that changing the title of the section signifies a change in approach, from imposing a moral stigma on the victim of the crime to dealing with the behavior which causes harm to individuals or the public order.
Dr. Limor Ezioni

The background to Article 351 of the Israeli Penal Law is the worldwide change in the basic understanding of sexual offenses. Changes to the rape law\(^{102}\) led to a redefinition of the crime of incest and the protected value it threatens. The 22\(^{nd}\) and 30\(^{th}\) Amendments broadened the definition of what rape is. The crime was no longer limited to forced sexual intercourse by a man upon a woman, but now included any kind of non-consensual sexual contact, initiated by a member of either sex. This departure from the anachronistic definition of rape had both practical and more theoretical implications, since it can be seen to indicate a change in basic conceptions. The value protected today through the new versions of Articles 345 and 347 is every person's right to have control over his or her own body; to not to be a victim of violence; to be free of the humiliation of being used against one's will for the fulfillment another person's sexual desires, whether of one's own sex or a member of the opposite sex. This differs from the traditional emphasis on the protection of female genitalia from penetration, which reflects the view a women (and specifically her genitalia) are the property of her husband and identifies the husband's right to protect his property.\(^{103}\)

In effect, the legislature did not establish new offences. Offences such as rape, consensual penetration consented penetration, sodomy, and indecent assault were unaltered.\(^{104}\) The addition of Article 351 was intended to set harsher maximum punishments for sexual offenses inside the family unit than for other sexual offenses. There can be little doubt that the legislature is committed to safeguarding the family unit and to increasing the severity of punishments for those who commit sexual offenses on family members. The legislature has sought to better protect family members – usually minors – from parents and other relatives who disregard their obligation to shield their offspring from harm when they engage in the shameful act of sexual abuse.\(^{105}\)

\(^{102}\) Article 345 of the Penal Law.


\(^{104}\) This is with the exception of the 22\(^{nd}\) and 30\(^{th}\) Amendments to the Penal Law, which adopt a broader definition of the deeds.

Article 351 of the Penal Law first defined incest as a separate and especially serious crime.\textsuperscript{106} The legislature expressed its clear opinion that acts of incest are humiliating and degrading, and run counter to the fundamental principles of law and morality, such that “the soul is disgusted by this repulsive phenomenon.”\textsuperscript{107} The legislature maintained that although incest could have been dealt with from within the framework of rape law, it is an especially heinous crime, one which requires a separate criminal statute.

These legal changes contributed substantially to the protection of victims of incest; they, however, did not provide an adequate solution for the group at the focus of this paper, women who experience severe emotional injuries as a result of acts of incest committed upon them during childhood. For these women, the response of the legislature and the legal system was inadequate.

D. Psychological-Social Change: Understanding the Phenomenon of Delayed Reporting

We now turn our attention to women who were victims of incest as children, who bear the consequences of the act not only in childhood but throughout their lives. In certain cases, after a minor complains that her father has performed sexual acts on her, the father-daughter relationship is terminated, the father is evicted from the house, with all that implies, and the minor is given professional psychological therapy, hopefully in time to allow rehabilitation. The situation is different for women. They turn to the enforcement and welfare authorities many years after the fact, when they have already grown up and left the house, when they have already to built a family (or not) and learned how to be a parent (or not). These differences necessitate different approaches both to the offence and to the value protected by the prohibition.

1. Long- and Short-Term Influences

\textsuperscript{106} This Article deals with the entire range of sexual offenses, from sexual assault to rape under especially disturbing circumstances. In each case, when the crime is committed upon a minor by a family member, the punishment is more severe.

\textsuperscript{107} The bill notes that sexual offenses are counter to the most basic rules of morality and that more and more cases have come to light in recent years.
The following discussion of the long- and short-term consequences of incest serves several purposes: (a) it establishes what kinds of problems the victims have to deal with after they have been abused; (b) it can assist us in better defining what incest is (and is not); (c) it helps us determine the proper punishment for the crime; and (d) it introduces the issue of limitation.

Incest is characterized by a variety of both long- and short-term affects. Shortly after sexual abuse takes place, its victims show signs of fear, panic, confusion, guilt, anger, depression, and feelings of loss and grief. These can be attributed in part to the fact that incest by its very nature involves secrecy and the betrayal of trust by a family member, which then engender a sense of guilt and of being a partner in crime. Victims of incest suffer from physical symptoms as well, including but not limited to bed wetting, headaches, fainting, and cramps. The long-term physical effects of incest often relate to bodily functions and can even result in bodily harm: injuring oneself, suicide attempts, eating disorders, addictions, and psychosomatic illnesses. There are also long-term psychological effects. Women who were childhood victims of sexual abuse in general and incest in particular are prone to depression, dissociative disorders, post-traumatic stress disorder, and psychosomatic illnesses. Some studies mention that incest victims differ from other sexual-assault victims in that they tend to underestimate their distress as much as they can. This comes from their wish to protect the abuser qua family member or from their sense of shame for having violated a social taboo. Domestic sexual abuse has distinctive and problematic characteristics of its own: the frequency of abuse and the period of time the abuse goes on, close relations of dependency and authority, a large age gap between victim and felon, and its being part of the familial framework, on which the child is dependent. A short period of time is defined in the literature as up to two years from the time the crime is committed. Long-term effects are described as symptoms which appear two years after the sexual abuse occurs. These include bulimia, anorexia, and compulsive eating. The authors examined the frequency of eating disorders among 65 female incest victims ages 20-57 and found a relationship between sexual abuse during childhood and bulimic behavior or bulimic neurosis. The authors note that long-term effects of abuse during childhood are apparent not only among women, but also men who were sexually abused as boys. Psychosomatic disorders are physical symptoms that do not have a physiological explanation and there is reason to assume that they are connected to psychological factors. Symptoms include migraines, back pains, digestive trouble, pain in the area of the waist, hemorrhoids, limp and/or weak muscles, and ringing in the ears. There are also long-term psychological effects. Women who were childhood victims of sexual abuse in general and incest in particular are prone to depression, dissociative disorders, and psychosomatic illnesses. Some studies mention that incest victims differ from other sexual-assault victims in that they tend to underestimate their distress as much as they can. This comes from their wish to protect the abuser qua family member or from their sense of shame for having violated a social taboo. Domestic sexual abuse has distinctive and problematic characteristics of its own: the frequency of abuse and the period of time the abuse goes on, close relations of dependency and authority, a large age gap between victim and felon, and its being part of the familial framework, on which the child is dependent. A short period of time is defined in the literature as up to two years from the time the crime is committed. Long-term effects are described as symptoms which appear two years after the sexual abuse occurs. These include bulimia, anorexia, and compulsive eating. The authors examined the frequency of eating disorders among 65 female incest victims ages 20-57 and found a relationship between sexual abuse during childhood and bulimic behavior or bulimic neurosis. The authors note that long-term effects of abuse during childhood are apparent not only among women, but also men who were sexually abused as boys. Psychosomatic disorders are physical symptoms that do not have a physiological explanation and there is reason to assume that they are connected to psychological factors. Symptoms include migraines, back pains, digestive trouble, pain in the area of the waist, hemorrhoids, limp and/or weak muscles, and ringing in the ears.
traumatic disorder, fear, anxiety and phobias, poor self-image and body image, and attacks of rage.

The crucial difference between incest and other sexual offenses is that incest threatens the child's fundamental trust in an important figure. This is the source of tremendous difficulties when the child reaches adulthood. Research indicates that the victims of incest have a higher rate of psychological and negative inter-personal issues than found in the general population. The incest survivor will frequently experience difficulty with social ties, romantic relations, intimacy and sexuality, parenting, and a recurring pattern of victimhood. Studies and personal testimony

mechanism has a number of expressions, including confusion, detachment, splitting, numbness, dissociative psychotic behavior, and even multiple personalities. See Courtois, footnote 34, at 106-107.

According to the clinical literature and case studies, fear, panic and phobias are commonly seen in incest survivors. Adults may experience fear at twilight, while sleeping, or at night; be afraid to fly or take a train; and have claustrophobia. See Courtois, footnote 34, at 103.

This is expressed in low self-esteem, poor self-image, and a sense of guilt for having been partially responsible for the incestuous relationship. Studies have consistently found that incest victims see themselves in a negative light. Many report feelings of shame, that they are evil, and that something not right in them causes them to be unloved. The victims of incest feel the experience has marked them and ask themselves how they let it happen and why they did not stop it. Coutois, footnote 34, at 105. See also Meiselman, K. C. (1990). Resolving the Trauma of Incest, at 195.


In the professional psychological literature, female victims of domestic violence and incest are compared to wounded veterans. See: Emotional Handicap, Medical, Research, Social, Legal and Restorative Aspects (2002) at 331 (edited by A. Bleich & Z. Solomon). [In Hebrew]; Herman, J. (1994). Trauma and Recovery, at 19-70.

The heart of the problem is the difficulty victims experience in trusting others after they have been betrayed by a family member: “If I couldn’t trust my family, who can I trust? No one is trustworthy.” See Courtois, footnote 34, at 111, for contributing factors, such as labeling and exclusion, difficulty in trusting the environment, and the desire for self-protection lest the witness suffer another injury. See also: Swink, K.K. & A. E. Leveille (1986). ‘From Victim to Survivor: A New Look of the Issues and Recovery Process for Adult Incest Survivors.’ Women and Therapy 5 (2&3): 119. The literature identifies important differences in the social adjustment of victims of sexual abuse, incest victims, and women who were not abused, with adaptation capabilities weakest among the incest victims; see Parker & Parker, at 183.

Clinical evidence and empirical research indicates that incest has an especially strong effect on sexual behavior, the ability to create intimate couple relationships, and sexual functioning as an adult. Emotional elements include trust, openness, and the ability to rely on others. Courtois, see footnote 34, at 107; Westerlund, E. (1992). Women’s Sexuality after Childhood Incest, at 52.

Incest arises against the background of a conflict and of lack of cohesion in the family unit. Childhood exposure to a parenting style that does not impose limits and is unable to protect the child can lead to the inability to internalize an appropriate model for parenting, and later in difficulty in functioning as a parent. In addition, the victim may experience conflicting emotions concerning his or her original family and problems in dealing with the emotional demands of parenting, and in particular the ability to give, to create intimacy, and to establish close, open relationships – namely in those areas in the victim's
Dr. Limor Ezioni

demonstrate that women can be plagued by after-effects for years after the fact. As a group, incest victims experience a unique set of long-term effects.

One way in which domestic sexual offenses differ from other crimes is that these offences are often first spoken of and reported years after the victim has reached adulthood. This can be attributed to several factors, including the fact that the victim often resides long-term with the person who has abused her physically and emotionally, and in some cases continues to abuse her; the abuser has both control and authority over the victim; the victim is frequently reluctant to “tear apart” the family unit; and finally, repression is a characteristic element of domestic sexual offenses. Regardless of how horrendous the deed, the victim are apt to refrain from complaining at the time of its commission.

Psychological studies indicate that most often domestic sexual abuse follows a regular and predictable pattern. Since we are primarily interested in the legal aspect of these crimes, an exhaustive treatment of the psychological literature is beyond the bounds of this paper. Below we present some of the important findings from the field, which serve as the backdrop to the legal system's response to domestic sexual offences.

As a rule, the criminal will demand that no one be told of the deed. This ensures that the victim will continue to be sexually available. As time passes, the criminal will remind the victim that their relations are normal but nonetheless must be kept secret. The typical victim, who is abused from a very young age until adulthood, reacts passively to the situation. It is the abuser who wields all the power and authority in the relationship. At a later age, when the victim discovers the societal taboo on these relations, she will be plagued by guilt and shame. At this point, the abuser will threaten her that if she does not cooperate with him or she reveals their secret, this will open the door to a chain of events that will be dreadful for her, her family, and others in her circle. The abuser will threaten

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123 The recurring victimhood phenomenon among incest survivors is expressed in cases of rape, dependency, and physical abuse at the hands of partners and caretakers: Courtois, see footnote 34, at 115. Russell, footnote 16, at 87, relates that 68% of the victims she studied were raped again during their adult life, 48% reported a marital relationship with an abusive husband, and 62% reported being sexually attacked by their husbands.
to have the victim's father imprisoned, to abuse her younger sister instead of her, or to physically harm another member of her family. As a result, most children keep mum about domestic sexual abuse. The father, who continues to speak of what will happen should she not keep the secret, often manages to convince his daughter to believe she is an active and interested party to the crime.

What can scientific findings regarding memory loss after trauma teach us about the victim's delayed response to incest? A number of recent studies indicate that delayed responses are typical of victims of a trauma (e.g. incest). We believe that this finding should be taken into account in both criminal and civil law. Victims deal with trauma by developing defense mechanisms, which help protect them from conflict and disturbing emotions. Defense mechanisms operate subconsciously to attenuate negative feelings (most often, stress) and to some degree distort reality. The most common defense mechanisms among victims of abuse and violence are halting (refraining from thoughts that cause pressure), denial (ignoring the dangerous aspects of the situation or reinterpreting the event in a way that makes it seem less threatening), rationalization (supplying justifications and rational explanations for the traumatic occurrences in a way that allows victims to distance themselves from the emotions they arouse) and repression (selective forgetting of threatening content).

The victim’s inability to deal with the trauma she experienced can lead to the development of several different defense mechanisms. When the trauma is tied to abuse, the victim ceases to believe that the world is a safe, just, and fair place; this is exacerbated when the abuser is an adult family member who serves as a loving and responsible parent or authority figure. The abuse may be so distant from the victim’s

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126 Id. Russell, see footnote 16, at 59; Walstrom v. State 752 P. 2d 225, 228 n. 9 (Nev. 1988); State v. Hensley, 571 N.E.2d 711, 715 n. 1(Ohio, 1991). On page 714 of the decision, we read: “It is common knowledge in child sex abuse cases that the victims often internalize the abuse, and in some instances blame themselves, or feel somehow that they have done something wrong. Moreover, the mental and emotional anguish that the victims suffer frequently inhibits their ability to speak freely of the episodes of abuse.”


129 Kept Witnessing or Kept Childhood, on the Question of Limitation in Domestic Sexual Offenses (1994). (edited by T. Morag). [In Hebrew].
normal life and routine that the victim completely loses all sense of reason.\textsuperscript{130} Children often react through memory loss (dissociation) during the attack itself, by blocking the event from their consciousness, or by mentally “leaving” their bodies. The more violent the attack is, the more likely that dissociation will turn into amnesia with an adoptive benefit that enables the child to function normally during the period of abuse, which could last several years.

The literature confirms these conclusions. Researchers discovered that memories of childhood sexual abuse are created through a terror-induced self-hypnotic state. The victim's center of attention is narrowed and diverted from the center of pain. The consciousness absorbs the experience in a fragmented form, which affects the quality of the memory. This explains why a victim can remember a minor detail with great precision, for example the wallpaper in the room where the rape occurred, despite the fact that the victim was five when the rape occurred.\textsuperscript{131}

Clinicians who treat the victims of especially terrible childhood traumas write about split memory. Some victims report having memory fragments in the form of physical sensations, such as pressure and paralysis of the legs, pain in the area of the hips and groin, or a sense of numbness in different areas of the skin. The victims will usually seek medical aid for these symptoms.

In another scenario, a victim may have dreams, experience evasive memories, or see mental images. A victim can also experience post-traumatic emotional symptoms, such as panic attacks, fear, and depression. Since the experience of the abuse has been repressed, the victim will not understand why she feels the way she does.

Another reason childhood abuse is not reported at the time it occurs is the emotional pressure exerted on the victim to keep the relationship a secret.\textsuperscript{132} This pressure will continue to exist as long as the victim, the family, and the abuser are in close contact with one another. On the one hand, the victim develops the feeling that there is no escape and believes that no one would believe or support her were she to tell.


At the same time, however, the appalling secret grants her a sense of empowerment as well as the responsibility to safeguard the family unit. The victim's feelings veer from power and strength to helplessness and the lack of control over her own life.\textsuperscript{133} Other contributing factors are a sense of family loyalty, the concern that the family will be dismantled if the abuse is reported, and fear of further harm.\textsuperscript{134} Incest victims often feel responsible for the wellbeing of the members of their family members and choose to remain silent to ensure that the abuser will not touch or injure someone else in the family.\textsuperscript{135}

The cultural taboos on sex and incest and the universal value of parental respect also serve to dissuade the victim from filing a report or submitting a complaint. This is especially true for women in conservative, traditional, or religious cultures. Adult abusers manage to plant in their victims a sense of shame and responsibility, and the victims come to believe the adult and become convinced that they had deserved to be abused. This distorted version of events will cancel out any inkling on the part of the victims to report or complain about the abuse. Even if the victims are able to understand that they are taking part in an unacceptable sexual activity, they are powerless to prevent or stop it.\textsuperscript{136}

Psychologists refer to this phenomenon as post-incest syndrome.\textsuperscript{137} The assumption is that these incest survivors will make every effort to avoid a situation, e.g. submitting a legal claim, which is liable to force them to relive their childhood traumas.\textsuperscript{138} Although the victims are aware of having psychological problems, they are loath to return to the root of their injuries. Either they have completely repressed every memory related to the abuse or the memories are so painful that the victims cannot deal with them directly. In other words, a direct consequence of post-incest Syndrome is the emotional inability to deal with the pain of incest. The victim is thus prevented from

\textsuperscript{133} Eilon, O. (1990). \textit{A Gentle Balance: Dealing with Pressure Situations in the Family}. [In Hebrew].
\textsuperscript{135} \textit{Id.}
\textsuperscript{136} \textit{Id.}
\textsuperscript{138} Rosenfeld, see footnote 141, at 206, 208-210.
complaining to the law-enforcement authorities or submitting a legal claim during the period of abuse or immediately thereafter.\textsuperscript{139}

The sociological model sets out three steps that precede a legal dispute and its prosecution: naming, blaming, and claiming. Victims of domestic sexual offences have trouble naming, i.e. admitting to themselves that they were hurt by an experience. If they are able to name, the fear of exposing a family member may prevent them from blaming. When they have successfully dealt with both naming and blaming, the victims must summon the emotional resources required for claiming. Here, the painful experience is rendered into legal terms, rationales, remedies and evidence, which usher in a whole new set of difficulties.\textsuperscript{140}

There is compelling evidence that incest can cause memory loss. Many victims of sexual abuse report that shortly after the event they remembered little or nothing about the experience, and that the memories came only later.\textsuperscript{141} This can explain why abuse is often reported to the authorities after a delay of many years. Only when the victim “remembers” the painful events can she initiate the criminal process. The fact that testifying in court is difficult for all victims of sexual offenses is well known, but even the step of going to the authorities can be emotionally painful. It is not sufficient that the victim recalls the details of the crime: She must also have the desire to press criminal charges. That the victim remembers the crime is a condition both for the post-trauma therapy and for initiating the criminal process in which the criminal will be tried.

2. Delayed Memory: A Critique

The phenomenon of delayed memory was greeted by the public with a good deal of skepticism,\textsuperscript{142} which peaked with the founding of the False Memory Syndrome Foundation (FMSF) in 1992. Many members of this organization believed that someone in their family had been falsely accused of incest. In their eyes, delayed memories are a phenomenon manufactured by therapists and books, and one which has the power to destroy families.\textsuperscript{143} The False Memory Syndrome Foundation received the support of many highly respected clinical psychologists and brain scientists, who dismissed repressed memory as “junk science.”\textsuperscript{144} The psychologist Elizabeth Loftus, for example, claimed that therapists use techniques capable of creating delusional and powerful memories. These include hypnosis, guided imagination, and treatment with sodium amital, the so-called truth serum.\textsuperscript{145} Loftus and others maintain that people cannot repress memories of events that took place over a long period of time, incest being a case in point.

Israeli professor Eli Zomer and others have responded that distorted memories and false claims of sexual abuse during childhood are exceedingly rare. Zomer emphasizes that patients usually disregard their therapists’ remarks and ideas when they do not dovetail with their own feelings and experiences. He argues that even manipulative and exploitative therapists do not have the wherewithal to cause their patients to recall memories and feelings so bitter that they will then falsely accuse their parents of abuse.\textsuperscript{146} We note that repression is in fact caused by a long-term pattern of violence between family members and that short-term and one-time traumas are generally remembered well over time.\textsuperscript{147}


\textsuperscript{143} \textit{Id.}

\textsuperscript{144} Among the psychologists and brain scientists who objected to the possibility of repressed memory in cases of sexual abuse of children are John Kilstrom, Elizabeth Loftus, Martin Oren, and Donald Spense. For more about these scholars and their work, see: Pope, K.S. (1996). ‘Memory, Abuse and Science: Questioning Claims About the False Memory Syndrome Epidemic.’ \textit{US Psychology} 51: 957; Ofshe, R. & E. Watters (1994) \textit{Making Monsters: False Memories, Psychotherapy and Sexual Hysteria}; Loftus, L. & K. Ketcham (1994). \textit{The Myth of Repressed Memory: False Memories and Allegations of Sexual Abuse}.’


\textsuperscript{146} \textit{Id.}

\textsuperscript{147} The percentages cited in the analysis of the data are imprecise, since they reflect the requests where the age of the victim was reported rather than all the requests received by.
Despite the criticism that has been voiced, most researchers are of the opinion that incest victims undergo a traumatic experience, one that leads to psychological, organic and mental disturbances. Beyond the immediate effect on the victim, delayed memories and other emotional/familial factors can cause a delay in reporting the abuse, something which has legal implications. Most important is the issue of limitation, since often the victim turns to the police many years after the crime, by which time the limitation period has passed and the offender qualifies for immunity.

In many cases, the victim does not contact the police at all, but rather appeals to an aid center. Analysis of the petitions to Israeli aid centers by age of the victim at the time of the attack shows that from 1996 until 2005 approximately 65% of all the petitions claiming sexual harassment were about sexual offences committed on minors up to age 18. Approximately 2% of these petitions relate to sexual offenses committed upon children up to age 12. We see, then, that most victims of sexual offenses who turned to aid centers were sexually assaulted as minors.

Analysis of the petitions received at the aid centers by the age of victim at the time she asked for help shows that from 1999 until 2005 only 42% of the petitioners were under the age of 18. Considering that some 65% of applicants were sexually assaulted as minors, we can appreciate the enormous gap between the number young victims and the number of young applicants. Among those age 19 and older, there are more applicants to the aid centers than victims. Approximately 60% of those who turned to aid centers for victims of sexual assault between 1999 and 2005 did so during the first year following the abuse, and approximately 18% came to the center a decade or more after the abuse took place.

The relatively high percentage of victims of child abuse who submit late petitions remained stable throughout the period examined. This is evidence that late reports are not a passing phase and that delayed memory is common. To take this a step further, it is not clear whether this data presents a true view of the picture in the field: Due to the

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innumerous obstacles the incest survivor must overcome, it is likely that some victims never report the abuse to aid centers.

A number of scholars have attempted to pinpoint the reasons for the long delay before incest is reported.\textsuperscript{149} Merav Dadia, director of the aid center for sexual-abuse victims in Tel Aviv, identifies three main factors discussed in the literature: the severity of the injury, the age of the victim, and how close the attacker is to the victim. Dadia sees an obvious connection between the seriousness of the injury and the likelihood a victim will report the crime: Fewer victims will report a crime in which they were seriously hurt, even when they have the desire to do so. The age of the victim at the time of the attack is also a factor:. The older the victim is, the more likely she is to file a report. Third, Dadia claims that the closer the attacker is to the victim, the later the report will be filed. When a family member abuses a young victim, the delay will be twice as long.\textsuperscript{150}

We now turn to our central area of concern. Given that the legal system was able to respond to psychological-social changes in the conception of incest, will it be able to do the same for the more “problematic” incest victims, namely women who did not report the crime for many years?

\textbf{E. Legal Change in the Wake of the Psychological-Social Change: One Step at a Time?}

As detailed above, incest is often characterized by delayed memory and therefore late reporting of the crime. How should allegations of incest be dealt with after the criminal limitation period has passed? We now examine how the Israeli law deals with this issue and various ideas that have been proposed in Israeli and comparative law.

\textbf{1. Criminal Law in Israel}

\textsuperscript{149} This is based on research into the delay in reporting among those who were sexually abused during childhood. See Schwartzberg, S. (2002). Factors which Encourage and Delay Revelation of the Secret Injury Among Victims of Sexual Abuse during Childhood. M.A. Thesis. Ben-Gurion University of the Negev. [In Hebrew].

\textsuperscript{150} Paragraph 9(a)(2) Criminal Procedure Law [Consolidated Version], 1982.
In Israel, the length of the limitation period reflects the severity of the offense. The limitation period for capital crimes, for example, is twenty years. In addition to the general norms, Israel has specific limitation rules for special cases. One example of this is Article 354 of the Penal Law, which deals with sexual crimes committed against minors.

Paragraph 351 of the Israeli Penal Law, which discusses sexual offences committed within the family, initially established a limitation period for incest similar to that for other crimes, ten years beginning the day the event occurred. Thanks to greater scientific and public awareness of the emotional and social havoc incest wreaks, together with the victim's new status as an important personage in the criminal procedure, the legislature set a special limitation period for incest, which was then was altered several times as the years passed. In 1995, with the enactment of the 47th Amendment to the Penal Law and Article 354, the period of limitation was set to begin when the minor turned eighteen. Eight years later, the 72nd Amendment to the Penal Law established that the limitation period would start when the victim turns 28, unless ten years have passed since the day the offense was committed, in which case the permission of the governmental legal council is required for an indictment.

The 72nd Amendment is the most recent expression of the legislature's tendency to extend the period of limitation in sexual offenses committed inside the family. Today a person up to the age of 38 can file a complaint concerning a sexual offense committed before he or she reached adulthood. According to the explanatory note to the legislation, the previous limitation period was too short, given that many victims are not able to

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151 The explanatory note provides the following:

(A) In the crimes mentioned in the paragraph, when committed upon a minor, the count of the limitation period will begin on the day he turns 18; But if ten years have passed from the day the crime was committed an indictment will not be passed without the approval of the governmental legal council –

(1) A crime according to paragraph 351.

(2) A crime committed by that responsible for the minor by the definition ‘responsible for a minor or helpless person’ in paragraph 68(a) and is not a family member by the definition of ‘family member’ in paragraph 351(8) and is one of the following offenses:

(a) Rape – by paragraph 354

(b) Forbidden consented penetration – by paragraph 346(a)

(c) Sodomy, by paragraph 347(a) or (b)

(d) Indecent assault, by paragraph 348(a), (b) or (d).

(A1) An indictment was passed, according to paragraph (a), following a complaint to the police after the victim turned 28, no one shall be convicted based on the single testimony of the victim, unless the evidence includes something which strengthens it.
disclose that the crime was committed for more than a decade from when they become of age.\textsuperscript{152}

Because of their special characteristics, domestic sexual offenses were given an especially long limitation period. There are still debates as to the difficulties the victims experience in the aftermath of the crime and the weight these should be accorded in the legal system. A more fundamental question is whether the present arrangement is optimal or whether a more comprehensive solution can be found. On the face of it, Israel seems to be one the most advanced countries in the world in this field. Nonetheless, despite renewed appreciation of the burdens incest victims bear and progressive new legislation, the situation in Israel is still far from ideal.

2. Dealing with the Limitation Periods in the United States of America

Several American states have extended the limitation period for sexual offences within the family. For example, Oregon extended the limitation period for rape of a child by three years\textsuperscript{153} and Illinois extended the limitation for sexual offenses in the family from five years to ten.\textsuperscript{154} Utah allows a claim to be filed in cases of sexual abuse of minors even when the limitation period has passed, provided this occurs within four years.

\textsuperscript{152} The current phrasing of Article 354 of the penal law states as following:

\begin{enumerate}
\item[(A)] In the crimes mentioned in the paragraph, when committed upon a minor, the count of the limitation period will begin on the day he turns 18; But if ten years have passed from the day the crime was committed an indictment will not be passed without the approval of the governmental legal council –
\item[(1)] A crime according to paragraph 351.
\item[(2)] A crime committed by that responsible for the minor by the definition ‘responsible for a minor or helpless person’ in paragraph 68(a) and is not a family member by the definition of ‘family member’ in paragraph 351(8) and is one of the following offenses:
\item[(a)] Rape – by paragraph 354
\item[(b)] Forbidden consented penetration – by paragraph 346(a)
\item[(c)] Sodomy, by paragraph 347(a) or (b)
\item[(d)] Indecent assault, by paragraph 348(a), (b) or (d).
\end{enumerate}

\textsuperscript{153} Or. Rev. State. § 131.125 (Suat 1988).
after the initial report to authorities.\textsuperscript{155} Colorado extended the limitation period by seven years for cases when the victim was under the age of fifteen.\textsuperscript{156} Arkansas has a six-year limitation period for most crimes, but the limitation period for rape is fifteen years if there is DNA evidence. This state also has a three-year limitation period for first-degree sexual abuse.\textsuperscript{157} Kansas has a five-year limitation period in cases of rape or sodomy,\textsuperscript{158} Massachusetts a fifteen-year period for cases of rape and sexual abuse,\textsuperscript{159} and Tennessee a fifteen-year limitation period for the rape of minors.\textsuperscript{160}

Many states have special statutes of limitation for sexual offenses, which postpone the beginning of the limitation period, in recognition of the difficulty a minor experiences in reporting the offense during the time he or she is subject to the control of the offender. Postponing and lengthening the limitation period are both designed to achieve the same goal.

Statutes that postpone the statute of limitations can be divided into two categories: those which start limitation when the minor reaches a certain age and those that start limitation when the crime is revealed. Cognizant of how difficult it is for a minor to complain about a sexual offense, several states decided to begin the limitation period when the offense is disclosed.

Some states set no limitation for this rule and others limit it until the minor reaches a certain age. In Arizona, the limitation period is delayed until the deeds are brought to the attention of the law-enforcement authorities.\textsuperscript{161} In Oklahoma, a criminal claim can be filed for sexual offences committed upon minors within five years from the day the offence is reported.\textsuperscript{162} In Alaska, a criminal claim can be filed for a crime committed upon a minor under the age of sixteen either within a year from the day the complaint was filed or within a year from the victim’s sixteenth birthday.\textsuperscript{163} In California,
a criminal claim can be filed within a year from the time a minor under the age of seventeen reports the crime to the authorities or to a responsible adult.\textsuperscript{164}

Some advocate doing away completely with the limitation period for domestic sexual offences. By taking this step, the legislature acknowledges the difficulties victims face when they report abuse committed inside the family as well as the fact that in some cases, the seriousness of the crime outweighs the underlying rationale of limitation laws.

In Wyoming and South Carolina, there is no limitation period for criminal offences; in Virginia,\textsuperscript{165} Rhode Island,\textsuperscript{166} North California,\textsuperscript{167} Maryland,\textsuperscript{168} Kentucky,\textsuperscript{169} Alabama \textsuperscript{170} and West Virginia\textsuperscript{171} there is no limitation period for serious criminal offences; in New Jersey there is no limitation for sexual assault\textsuperscript{172}; in Arizona there is no limitation for sexual offenses\textsuperscript{173}; and in Alaska there is no limitation for sexual offences committed upon a minor.\textsuperscript{174} Utah abolished the limitation period in cases where the identity of the criminal is unknown but DNA samples were taken from the crime scene.\textsuperscript{175}

Once we have established the effect of psychological recognition of delayed reporting on the Israeli legal system and compared the options chosen by various American states, we will discuss the central question of our test case before us: Was this change sufficient to satisfactorily protect incest survivors? Here we will also present the legal remedies available and ask whether civil compensation is adequate recompense for crime victims.

\textsuperscript{164} Cal. penal law § 803 (1993).
\textsuperscript{165} Va. Code Ann. § 192-8 (Suat 1988); Story v. State, 721 P.2d 1020, 1027 (Wyo. 1986). In this decision, it was decided that there is no criminal limitation period in the State of Wyoming.
\textsuperscript{167} Nc. Gen. Stat. § 15-1 (Suat 1988); State v. Johnson, 167 S.E. 2d 274, 279 (N.C. 1969). In this decision, it was ruled that there is no limitation period for criminal offenses in North Carolina.
\textsuperscript{170} Ala. Code § 15-3-5(A)(4) (Suat 1988). In the State of Alabama, there is a detailed list of the most serious criminal offenses, which have no limitation period. In 1985 the legislature added all sexual offenses in which the victim is under the age of sixteen to this list.
\textsuperscript{174} Alaska Stat. § 12.10.010(a)(2)(3) (Michie 2002).
\textsuperscript{175} Utah Code Ann. § 76-1-302(2) (Suat 2003).
F. Psychology and the Law, in Israel and around the World

In 2003, Article 354 of the Israel Penal Law was changed again, this time with the 72nd Amendment, which states that when the sexual offences enumerated in the Section are committed on a minor, the limitation period will not begin until the day the victim turns 28. The practical significance of this innovative statute is that with the consent the governmental legal council, a person can file a complaint until age 38 for a sexual offense that took place when he or she was a minor. The rationale for this change is the phenomenon of delayed reporting, which is especially common among incest victims.

A comparison of the legal framework in Israel to that of other countries puts Israel in a good light. Current Israeli law recognizes the complex nature of the crime, the difficulty the victim has in reporting it, and the special dynamics of an offence in which the victim spends many years under the control and authority of the injurer. The victim is given a long period of time to complain to the enforcement authorities, two decades from the time he or she reaches legal maturity. We now ask two questions: Is this the optimal arrangement? Where does it stand as compared to other legal systems?

American law addresses repeat offences under the umbrella of sexual offences committed within the family. The United States has not restricted itself to a single legal doctrine; instead, American courts have adopted two main approaches. The first, the continuing crime doctrine, is implemented in cases which involve an authoritative relationship and the dependency of the minor on the abuser. The law explicitly identifies the time the crime took place as the time when the course of behavior ended. The limitation period does not begin until this time.

These statutes only define a continuing crime when legislature has clearly stated its preference in the law. The fundamental criminal law in Hawaii, for example, contains the heading “continuous sexual assault of a minor under the age of fourteen years.” The appellate court of Minnesota used the continuing crime doctrine to lengthen the limitation period in cases of sexual abuse of children. In State v.

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176 See, for example, Model penal law § 1.06(4).
178 Model penal law § 1.06(4) & cmt. At 89.
Danielski, the victim was sexually abused by her stepfather for seven years, beginning when she was nine years old. Although the girl told her mother, the mother did nothing to protect her, and even took an active role in one incident. The Minnesota court ruled that when abuser has authority and mastery over the victim, sexual abuse becomes a continuous crime. These elements prevent the victim from reporting the sexual abuse. According to the court, the same parental authority that allowed the crime to take place also prevented the victim from reporting the crime. A Minnesota court applied the continuing crime doctrine in State v. Johnson as well. In this case, a girl was sexually abused by her father, who worked in law enforcement and threatened to put her in prison if she spoke about the abuse. When the girl was age five or six, her father locked her in a cell near adult prisoners, following which he sexually abused her. Since this was a continuing crime, the court ruled that the defendant could be tried after the limitation period had ended.

The Supreme Court of the United States has ruled that a criminal offence is considered to be a continuing crime only when the explicit language of a statute leads to that conclusion, or the intention of the legislature was to treat a certain offense as a continuing crime. As in Minnesota, other state courts have employed this doctrine in incest cases to circumvent the statute of limitations. Over a dozen states have taken the step of integrating this doctrine into their general criminal legislation, some even

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180 State v. Danielski, 348 N.W. 2d 352 (Minn. Ct. Aat 1984). In Minnesota there is no continuing crime in limitation statutes; see Minn. Stat. Ann.§ 628.26 (West 2003). This law establishes “a time limitation for reporting the offense.” The court implemented the continuing-crime theory after analyzing essential state criminal law and concluding that one element of sexual abuse of this type is the felon's preventing the victim from reporting the deed. The court argued that this force is a type of continuing behavior, and therefore it should be considered a continuing crime.

181 State v. Danielski, see footnote 192, at 353.


183 Id., at 17.

184 "Id.", at 18.

185 Toussie v. United States, see footnote 28, at 189.

legislating specific laws that specifically apply in cases of repeated and ongoing sexual abuse of children.\(^{187}\)

This doctrine is of obvious benefit in situations where the child does not report the sexual offences in a timely fashion, due to the fact that the abuser is a significant presence in the child’s life (as often happens in cases of incest). When the sexual offender controls the child’s day-to-day life and prevents the child from reporting the crime, it seems logical to begin the limitation period when the child is no longer under the offender's control. The doctrine also makes the process more efficient and objective, in that it obviates the need to deal with each case individually.

The American court laid out the importance of granting the judge discretion in serious crimes of this nature. With judicial discretion and explicit statutes in the criminal codex, the social interest protected by the ban on incest can be safeguarded both in theory and in practice. Important also are the limitation laws themselves, which were tailored to reflect the unusual characteristics of the crime.

In most states, the limitation period begins when the victim reaches age eighteen, although some set a younger age. In North Dakota, the limitation period begins when the victim turns fifteen\(^{188}\); in Florida and Massachusetts, it begins when he or she turns sixteen\(^{189}\); in Louisiana it begins when the victim turns seventeen\(^{190}\); and in New Jersey, Illinois, Arkansas, Pennsylvania and New Mexico, it begins at age eighteen.\(^{191}\) Some states have shortened the limitation period, some have lengthened it, and some left it as was. Iowa establishes a ten-year limitation period in cases of sexual abuse of the first to third degree, i.e. when the victim is under age eighteen, and the ten-year limitation period begins when the victim turns eighteen.\(^{192}\)


\(^{188}\) N.D. Cent. Code § 29-04-03.2 (Suat 1988).


\(^{192}\) Iowa Code Ann. § 802.2 (West Suat 2003).
Dr. Limor Ezioni

The criminal laws in a number of states exclude from the limitation period those times the suspect was on a lengthy trip outside of the jurisdiction of the state or did not have a job or residence in the state where he or she could reasonably be located.\footnote{193} At these times, the limitation clock stops, and the time the suspect was unreachable, however long it may be, will not be counted. Some statutes state that the limitation period will be extended for several years, but not longer.\footnote{194}

Many states have provisions for extending the limitation period, and they are used for crimes such as armed robbery and kidnapping. States including Massachusetts and Illinois recently implemented this type of provision in cases of sexual abuse of minors.\footnote{195}

As compared to the American legal system, the limitation provisions in Israel are quite advanced. Lengthening the limitation period by two decades is an expression of what distinguishes domestic sexual abuse from other crimes. While the American states extended the limitation period by four to fifteen years, in Israel victims of incest can file a complaint up to twenty years after the crime was committed.

The Israel law has one notable shortcoming: The court is not given any discretion in limitation claims. Once the court has determined that the legal limitation period has elapsed, the court's hands are tied – even when the case is particularly painful, there are extenuating circumstances for the delay, and the evidence is compelling enough that there is a realistic possibility of indictment.\textsuperscript{196} In our view, the decision to set a random period of limitation is extremely problematic in the case of incest, given the complex set of circumstances that mark in the crime and its aftermath. Even an unquestionably generous limitation period is an insufficient measure. We believe that judges should be encouraged to use their discretion and to employ juridical doctrines not specified in the law.

Israel boasts a highly advanced and rational legal system, but the Knesset and courts have been resting on their laurels. Without a doubt, Israel could benefit from the system adopted by American states such as Virginia, North Carolina, and Alabama, which place no statute of limitations on domestic sexual offenses. Alternatively, the current framework could be changed to grant wider judicial discretion and to take advantage of the many legal doctrines that complement the existing limitation laws, along the model of other American states.

A comparison of Israeli and American limitation laws shows that Article 354, which lengthens the limitation period in Israel by twenty years, is among the most advanced pieces of legislation and is evidence that the Knesset is aware of the many difficulties associated with incest. At the same time, however, the Knesset seems to be of the opinion that no further discussion of incest is necessary. This is despite the growing awareness of incest, the fact that every year more incest victims seek the assistance of aid organizations, and the large discrepancy between the number of people who seek aid and the number of files opened by the Israeli police, not to mention the even larger discrepancy between the number of people who seek aid and the number of indictments filed each year. A final problem is that the Knesset does not allow the courts any discretion with regard to limitation. As a result, the courts cannot mete out justice to those who admit their guilt if the limitation period has elapsed.\textsuperscript{197}

\textsuperscript{197} \textit{Id.}
1. The Compensation Problem

In the American federal and state legal systems, the victim has a constitutional right to have his or her say in court. Every state allows the victim to submit a victim impact statement at the sentencing phase, detailing the physical and emotional injury incurred. This can be included in the sentencing report or take the form of a separate oral or written statement. Today in the United States, all the states have a legal arrangement of this sort. Several states have even established a rule that before sentencing the court must hear the victim’s opinion on the appropriate punishment.

It appears that incest survivors benefit from the opportunity to address the court – as is the case in Israel, the United States, and England – and request the compensation they feel is warranted. We note, however, that when Israeli criminal courts realize that the discussion of damages will be both long and tortuous, they will often transfer the case to the civil court, without setting any damages themselves. Their claim is that that criminal rules and procedures are not well-suited to the discussion of damages.

Article 77 of the Penal Law limits compensation to NIS 228,000, a sum that is adjusted from time to time. It could be claimed that the ceiling is too high or too low. This ceiling helps separate criminal law from civil law, and ensures that criminal trials will be run in a speedy and efficient fashion, without the need for time-consuming estimates and calculations. This said, since incest wreaks not only short-term but long-term damage as well, the ceiling is not always high enough, and the judge should have the discretion to award higher compensation should the evidence merit this. Investing the court with the option of making exceptions to the ceiling would constitute legal recognition of the unique set of damages incest causes.

A high compensation ceiling, such as that in contemporary Israeli law, can be an effective device, since frequently a victim who is satisfied with the compensation offered will not turn to the civil courts, a step which is liable to be financially and emotionally

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198 Fed. R. Crim. P. 32(c)(3)(E): “Before imposing sentence, the court must: ...if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at sentencing hearing and determine if the victim wishes to make a statement or present any information in relation to the sentence.”


draining and perhaps a dead end as well, if the limitation period has elapsed because the report was submitted late. On the other hand, the damage caused by incest is far in excess of the ceiling set by law. Awarding the victim the maximum compensation can simplify matters and – if only for the sake of appearance – create the misleading impression that the damage to the victim was estimated to be only several thousand sheqels. In fact, in civil court, incest victims can receive damages in the millions of New Israel Sheqels.

2. Civil Compensation

Article 88 of the Penal Law provides that “criminal acquittal or sentencing or sentencing compensation according to Article 77 do not free from responsibility for damage according to any other law.” In other words, accepting compensation during the criminal procedure does not preclude a civil suit. This statute is especially useful for incest victims. If the criminal procedure led to *res judicata*, the incest victim could not receive proper compensation for the damage caused. Civil compensation is important for the incest victim because it is more generous, even after the criminal-compensation ceiling was raised.

An interesting question is not answered in the statutory framework: What is the relevance of a civil claim submitted to a criminal judge about to decide on compensation? Would it likely influence the criminal court to decide to award a lower sum, since the civil court will also award damages?

Incest must be treated differently than other crimes, and this holds true as well for those who sit in court and set the compensation for the victim. Throughout life, the incest survivor will bear the consequences of the crime. Compensation – regardless how much money is involved – will not turn back the clock. At most, it will help with rehabilitation. We envision a future in which criminal and civil compensation will coexist. Even a generous settlement in a civil case will not not rule out the maximum compensation in the criminal court.

When victims cannot receive civil compensation because the statute of limitations has elapsed, their only recourse is criminal compensation. A woman encounters numerous difficulties when she decides to file a tort suit against a person who harmed her many years earlier. In addition to the emotional hardship involved, she must overcome
the practical obstacle of civil limitation statutes, which are strictly interpreted by the courts. As mentioned above, Israeli law sets a random ten-year limitation period from the time the victim reports the crime.

American courts deal with similar problems and have proposed different solutions. Michigan, for example, adopted a reasonability test to be used in cases brought by women who were the victims of incest as children; this is something that could and should be done elsewhere as well. Israel follows the example of some American courts which adopt a more lenient interpretation of civil limitation laws, particularly with regard to childhood incest. Limitation is the first procedural barrier. If and when the victim overcomes this obstacle, she still must prove her claim. We now turn our attention to the claim itself and the question of compensation, should the claim succeed.

The civil law allows for compensation of women who were victims of childhood incest, but does not specify what damages are due them. Here and elsewhere, the law is a reflection of reality. A small fraction of cases result in a damages claim in a civil suit, due in part to the fact that the woman has little motivation to pursue a legal course of action. This dovetails with the failure of the court to adequately compensate the victim in the handful of cases where compensation is set by the court and not settled out of court.

Analysis of these few cases shows that the courts do not recognize the severity of the damage caused by the act of incest itself. Compensation is set in a technical fashion, with few words spent on expressing sympathy for the victim. The court does not take into account the extent of the damage to the victim, her compromised dignity, her right to autonomy, or the integrality of her body and soul.

The value of granting compensation to a female victim of child sexual abuse is not limited to redressing the wrongs done her. New directions in constitutional law coupled with increased awareness of the civil aspects of the crime have led to a greater appreciation of compensation. One goal is the preservation of social norms; another is deterrence; a third, the protection of core constitutional interests.

G. The Connection between Psychology and Law and the Criminal-Tort Reality

The psychological and legal saga of women who were victims of childhood incest appears to be unique. This is evidenced by the the frequent inability of victims to
recognize the acts of abuse for what they are, as well as the constellation of the long- and short-term psychological repercussions for the victim. Further examination shows, however, that incest is but one exemplar of the relationship between psychology and the criminal-tort reality.\textsuperscript{201} Although this is not the venue for a large-scale empirical study – and no doubt this type of research would be of great value to the scholarly and legal community – we can nonetheless assume that this basic model, or many of its elements, will recur every time we analyze legal reactions to psychological phenomena.\textsuperscript{202}

The basic model addresses the following: the difficulty of defining a psychological phenomenon using psychology alone; the social response to new developments in psychology; the legal recognition of the new social reality; and the inability of law as a governmental institution to properly defend those individuals defined as “victims” of the psychological phenomenon. Often it will be the victims who require protection (as in the case of incest or relatives of those injured or killed in car accidents), but in certain cases the victims are the criminal offenders themselves, who bear only partial responsibility for the deed because of their emotional deficits. The central problem in the model is that despite major advances in psychology, the “victims” often do not receive the appropriate legal defense.

Often this problem is rooted in psychological factors. In the case of incest, for example, one would point to delayed memory as complicating factor in defining appropriate damages.\textsuperscript{203} In the same way, one can claim that, with the exception of particularly cut-and-dried cases, the legal system does not recognize the diminished responsibility of the mentally ill for crimes of murder and manslaughter, being unwilling to exempt from punishment those responsible for these crimes.\textsuperscript{204} Although this argument


\textsuperscript{203} As mentioned, this makes it extremely difficult to figure out the limitation period in the civil and criminal arenas. See also: Kisch, W. J. (1996). ‘From the Couch to the Bench: How Should the Legal System Respond to Recovered Memories of Childhood Sexual Abuse?’ \textit{US University Journal of Gender & Law} 5 (207): 216.

\textsuperscript{204} Even those willing to acknowledge that in some cases the mental illness itself is responsible for the crime have supported the indictment of the emotionally ill for crimes they committed (even if the
contains a kernel of truth, we believe there is a far more basic cause: the fundamental difference between psychology and the law.

Psychology is a dynamic discipline, and psychologists in different periods have adopted and endorsed different approaches to identical psychological symptoms. The law, on the other hand, is generally not capable of recognizing and reevaluating psychological conditions. When a psychological condition receives legal recognition, whether through legislation or court rulings, the nuance is most often lost. Law demands clear decisions: beyond reasonable doubt in criminal cases or the balance of probabilities in civil-tort cases. This black-or-white quality makes it nearly impossible for the law to respond to new insights in psychology. As a result, the “victims” of a psychological condition will not enjoy appropriate legal protection without some kind of a legal-social bond.

Despite progress in how incest victims are treated and a growing awareness of the difficulties they encounter, legal change has been slow in coming. Although American law does recognize psychological change – as in the cases of limitation and compensation – this, too, is insufficient. Even if we “import” American legal developments to Israel, without a social component, the law will not adequately protect the victims. This is due to the unusual nature of sexual offenses, and especially domestic sexual offenses. Unlike other crimes, incest laws can only be enforced if the victim goes to the authorities, and most often family members will not encourage her to do so.

When a victim with low self-esteem feels that deed was “justified” and that sexual offenses are a normal part of a girl's life, she will choose not to issue a complaint. Many of the victims are abused during adolescence, a stage typified by crises in all aspects of life. For our purposes, the most relevant characteristic of adolescent girls is their lack of desire to confide in others (and especially in those outside their immediate


This is true even though psychology is supposedly a basic principle of the legal system. For example, we assume that judges can reach objective decisions and ignore any personal predisposition. There is also evidential importance to the “emotional element” of the commission of a crime. See: Tanford, J.A. (1990).

circle), such that in their preteen and teenage years, the girls are increasingly unwilling to talk. This being so, legislative change à la the United States is not necessarily the best way to properly protect the victims of incest. Legal change should ideally be complemented by a social/bureaucratic support system, one which will assist victims to navigate the legal system, and this is precisely the legal-social bond we want to develop and support.

We now use the test case of female victims of child sexual abuse to draw a portrait of how this legal-social bond would work. There can be little doubt that far-reaching change in the social-services and legal systems is necessary to adequately protect these victims.

We recommend the establishment of an umbrella organization, founded to treat this population in a non-threatening and welcoming manner. All the services the women require would be available under one roof, literally and figuratively, which will make their lives easier and allow the authorities to function more efficiently and effectively. Female victims of child sexual abuse will be able to better deal with the enormous injury they suffered, whose after-effects continue to dog them for many years.

One possible model is that used in the United States, another is that employed in Israel for young crime victims. We envision a center that will offer comprehensive, coordinated services from professionals and government authorities, such that the center will assist the victim from the moment she requests aid, through the legal process, and beyond. The staff will include police investigators, members of the prosecutor's office, physicians, psychologists, and social workers. They will listen to the woman's story and


209 In 2002, a center for the protection of child crime victims opened in Israel. This model is similar to the American one. The center was established in Jerusalem with assistance from the National Council for Child Safety. It offers investigative and diagnostic services and initial intervention for the victims of sexual offenses, violence, and neglect. The center operates under the auspices of the Hadassah Hospital Ein Kerem (affiliated with the Hebrew University); Ashalim, the N.G.O. for planning and developing services for at-risk children and youth and their families; the Municipality of Jerusalem; and the ministries of law, labor and social affairs, and internal security. See: Haviv, J., Ben Rabi D. & D. Argov (2001). ‘The Police Handling of Minors and Youth: The Police Preparations for Dealing with Crimes whose Targets are Minors.’ Conclusive Report (on file with the author).
then together formulate a legal and therapeutic strategy that will ensure that her interests will be properly served. We believe that coordination between the police, prosecutors, and therapeutic staff will help prevent the case from “falling between the cracks,” something which happens too often today.

If the staff members decide it is in the woman's best interest to take legal steps, they will be at her side from start to finish. At any given moment, she will be able to get professional advice and support. She will also receive update on the status of her case, whether at the police, the prosecutor's office, or the courts. The staff will acquaint the woman with the ins and outs of the legal system and help her deal with the personal issues that arise.

In addition to helping the women navigate the system, the staff of the center will engage in research, provide therapeutic assistance, and work in fund raising. In addition to the main goal of serving the population of incest survivors, the center will contribute to the social agencies (and thus the society as a whole), by helping them to conserve on time, money, and personnel hours.

The psychologists, physicians, and social workers will provide the survivors of childhood incest with long-term therapeutic care. The legal staff will work for societal and legal reform, in the hopes that the social-welfare and legal systems will become more understanding of and sympathetic to these women and their needs. This will involve a campaign for more generous settlements in the criminal and civil courts, something we believe is crucial. Appropriate avenues are legislation, lawsuits, legal claims, and amicus curiae briefs.

Every discussion of how psychological findings can be translated into legal change raises the point that jurists ignore the clear limitations of law as an “institution.” We legal professionals must do otherwise if we are to succeed at giving victims the protection they deserve. In this particular case, blind faith in the law can cause the victim severe, and even irreparable, damage.

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210 It was proposed that the United States pass a special law to increase punishment for rape by a person familiar to the victim, with the goal of “healing” the victim. See: Simon, L.M.J. (1999). ‘Sex Offender Legislation and the Antitherapeutic Effects on Victims.’ Arizona Law Review 41(485): 553.

Coming at the problem from a somewhat different point of view, it has been suggested that lawyers who provide legal aid to battered women receive instruction in psychology. See: Meier, J.S. (1993). ‘Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and in Practice.’ Hofstra Law Review 21(1295): 1366.
As we have seen, it is dauntingly difficult to translate psychological change into legal change, at least in the case of female victims of child sexual abuse. Given the complexity of the discipline, psychology will not find real expression in the law unless we institute a legal-social bond. Even if we as legal professionals try to integrate psychology into the criminal-tort reality – and any such attempt should of course be applauded – we will not be able to properly serve incest victims without the active cooperation of the social services.

This paper used the case of incest to demonstrate that the law cannot deal with the after-effects of incest on its own. Although the legislature and the court are important players, final responsibility falls to the executive authority. We cannot state with certainty that this is true for other cases in which psychological change is translated into law, but it is reasonable to believe that it would hold for cases involving mentally ill criminals and compensation for emotional damages. The holistic approach allows a full integration of psychology into the legal criminal-tort system, for the benefit of victims, and occasionally even for criminals.