

**PREVENTING VIOLENCE IN THE FAMILY:
AN OVERVIEW OF ISRAEL'S NEW LEGISLATION**

The pathological patterns of behaviour that afflict the family unit in most countries also exist in Israel. For many years this problem was tackled mainly by social workers operating within the family cell, or by the courts, within the framework of divorce or separation actions initiated by the suffering spouse. Medical attendants, the police and State prosecution agencies by and large tended to ignore the problem.

During the last three years we have witnessed a surge of legislation related to violence in the family in Israel. This development has been due to several causes: the occurrence of cases of extreme violence against a member of the family (generally a spouse, including a common-law spouse, or a child); women's new awareness of their rights and of the existence of support groups who could help them; and the recommendations presented to the Minister of Justice by a Special Interdisciplinary Taskforce on policy concerning the investigation, trial and punishment of offences related to violence in the family.¹

Legislation passed by the Knesset² between 1989 and 1991 relates to a wide range of topics connected with violence in the family. These topics can be categorised into four main classes:

1 THE PROTECTION OF MINORS AND VULNERABLE PERSONS

The Penal Law (Amendment No 26), 5749-1989³ (hereinafter referred to as Penal Law (Amendment No 26)) created special offences of battery⁴, battery causing serious bodily harm⁵ and cruelty⁶ when these acts were perpetrated on minors⁷ or "helpless persons".⁸ The law created an aggravated version of these offences when committed by a relative⁹ or by a person having authority over the victim.¹⁰ The penalties in these cases are seven¹¹ or

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- 1 The final report was prepared by Judith Karp, Deputy Attorney General of the State of Israel and chair of the Task Force. The report was published by the Ministry of Justice of the State of Israel on October 25, 1989.
 - 2 Israel's Parliament. It should be noted that all this legislation was presented by private members of the Knesset belonging to a wide range of political parties. The Government followed up and adopted the proposed private bills. Thus, in the preparation of the bills for their different readings there was co-operation from the Knesset's Committee on Legislation, the Ministry of Justice and various women's voluntary associations.
 - 3 There is as yet no official English translation of this law. The official Hebrew version was published on 7.12.1989 *Sefer Hachukkim* No 1290 of 5749-1989, at 10.
 - 4 Section 368B(a) of the Penal Law (Amendment No 26).
 - 5 Section 368B(b) of the Penal Law (Amendment No 26).
 - 6 Section 368B(c) of the Penal Law (Amendment No 26).
 - 7 In this context, a minor is a person who is not yet eighteen years old.
 - 8 "Vulnerable person" as defined in Section 368A of the Penal Law (Amendment No 26), includes any person who cannot attend to his/her personal needs because of age, sickness, physical or mental handicap or any other reason.
 - 9 By parents, foster parents or adopted parents (Section 368A(1)) or by relatives from the extended family unit (in-laws, grandparents and grandchildren, uncles or aunts, nephews or nieces, or cousins (Section 368A(2))).

nine¹² years of imprisonment instead of five or seven years, which are the penalties for the basic versions of the offences.

An interesting feature of this new legislation is that it imposes upon the public an obligation to report to the police, or to a special social work officer, instances of violence or cruelty committed against minors, or vulnerable persons, by their relatives, or by persons in charge of them.¹³ A similar obligation is imposed upon certain professionals who treat, or work with, the victims or with the offenders in their professional capacity, for example doctors, nurses, teachers or other educational personnel, social workers, psychologists, criminologists or paramedical personnel.¹⁴

2 SEXUAL OFFENCES AGAINST MINORS IN THE FRAMEWORK OF THE FAMILY

The Penal Law (Amendment No 30), 5750–1990¹⁵ added to the chapter on sexual offences a complex offence consisting of a variety of prohibited sexual acts committed against minors¹⁶ in the framework of the family.¹⁷ As in the previously cited legislation concerning the protection of minors and vulnerable persons, the legislature has adopted a modern and practical view of family relationships, and “de facto” relationships are also included, so that the offences are not limited only to classically recognised family relationships.

It should be noted that until the 1990 Amendment to the Penal Law, the only sexual behaviour in the family specifically addressed by the Penal Law was a limited offence of incest, when the act was committed by a man on his daughter or step-daughter (up to her twenty-first year of age). The amendment extended the penal treatment to various kinds of prohibited sexual acts towards minors, and included a wide range of family, and common-law family relationships.¹⁸

10 Common-law families (Section 368A(2) of the Penal Law (Amendment No 26)). The definition also includes other people in charge of minors and vulnerable people.

11 Section 368B(a) of the Penal Law (Amendment No 26): battery.

12 Sections 368B(b) and 368C of the Penal Law (Amendment No 26): battery causing serious bodily harm and cruelty.

13 Section 368D(a) of the Penal Law (Amendment No 26): the penalty for not reporting an act of violence is three months imprisonment.

14 Section 368D(b) of the Penal Law (Amendment No 26): the penalty for not reporting is six months imprisonment.

15 There is yet no official English translation of this law. The official Hebrew version was published on 10.8.90 *Sefer Hachukkim* No 1329 of 5750–1990, at 196.

16 Generally a person who is not yet eighteen years old. Some of the offences, for example statutory rape or sodomy, concern younger victims (boys or girls not yet fourteen or sixteen years old).

17 Section 351 was added to the Penal Law, 5737–1977 (Laws of the State of Israel, official English translation, Jerusalem, Special Volume, 1977). The penalties are from twenty years imprisonment for rape or sodomy by force; sixteen years imprisonment for statutory rape or sodomy (when the victim is fourteen to sixteen years old); fifteen years imprisonment for aggravated sexual assault; ten years imprisonment for sexual assault and five years imprisonment for lesser sexual offences.

18 Section 351(e) includes parents, spouses of parents and common-law spouses; it also includes the

3 NEW RULES OF EVIDENCE

One of the most painful jobs when prosecuting offences committed in the framework of the family is the need to bring the victim to testify against a close relative. Generally, a victim of acts of violence or sexual assault is wary and afraid to give evidence against his or her violent assailant. When the assailant is a relative, those feelings are compounded with feelings of shame and sadness, which make the experience in court even more gruesome.

The Israeli legislature addressed itself to the rules of evidence in two ways:

- (a) It amended Section 5 of the Evidence Ordinance [New Version], 5731-1971¹⁹ in order to permit spouses, parents and children to testify against each other in criminal proceedings concerning not only acts of violence,²⁰ but also acts of cruelty or prohibited sexual behaviour, even when non-violent.²¹
- (b) It amended the Law of Evidence Revision (Protection of Children) Law, 5715-1955²² in two ways. This law, almost forty years old, makes it possible to convict a person for a sexual offence relying on out of court statements of a child under the age of fourteen. The child does not generally testify in court and, consequently, cannot be cross-examined by the defendant. The child is examined by a specially trained social worker (a youth interrogator, according to the language of the law) and it is his or her report of the child's examination that is presented to the court. This report (plus corroborating evidence) constitutes sufficient grounds for conviction. The child may testify only if the youth interrogator allows it.

The 1991 Amendment extends the use of this kind of testimony to offences concerning violence or cruelty if they were committed by a parent against his or her child under the age of fourteen.

The second amendment deals with minors²³ testifying in court against a parent in criminal proceedings concerning a sexual offence. In order to minimise the psychological damage to the witness, the court may allow the minor's deposition to be taken in the absence of the defendant and in the presence of only the court and defence counsel.²⁴

following relatives (if they are eighteen years of age or more): siblings and stepsiblings (if they cohabit); aunt or uncle; niece or nephew; brother-in-law or sister-in-law.

19 *Laws of the State of Israel*, official translation, Jerusalem, New Version, Vol 2, at 198.

20 For these acts the Ordinance permits a spouse, a child or a parent to testify against his or her spouse, parent or child.

21 Section 1 of the Law Amending the Evidence Ordinance (No 9), 5751-1991, amending the abovementioned Section 5. There is yet no official English translation of this law. The official Hebrew version was published on 3.1.1991, *Sefer Hachukkim* No 1338 of 5751-1991, at 54.

22 *Laws of the State of Israel*, official English translation Jerusalem, Vol 9, at 102.

23 That is, a person who is not yet eighteen years old.

24 Section 2A of the Law of Evidence Revision (Protection of Children) Law, 5715-1955 as added in the 1991 Amendment.

These new rules of evidence were passed after the Legislation Committee of the Knesset heard at length the professional opinions of psychologists, social workers and education personnel, on the one hand, and on the other hand the strong criticism by representatives of the bar association and of a civil rights association, who expressed their serious concern for the rights of the defendant.

4 PREVENTIVE MEASURES CONCERNING VIOLENCE IN THE FAMILY

The Prevention of Violence in the Family Law, 5751–1991 (hereinafter referred to as the PVF Law)²⁵ was enacted in March 19, 1991 and entered into force on June 28, 1991. Its purpose is to provide emergency measures for the safeguard of people who are physically threatened by relatives.

Until the enactment of this law the problems arising from violence in the family²⁶ were treated in two main fashions:

- (a) When the victim was a minor, he/she would be removed from the family home and put in a foster home. The result of this was the aggravation of the feelings of shame and guilt of the victim, who would see herself/himself “punished” for the behaviour of the relative.
- (b) If the victim was a spouse, she or he could apply for a court injunction (called “peace at home”), the purpose of which is to force the guilty spouse to leave the family home during the time of the injunction. District courts and religious tribunals, competent to give these orders, rarely made use of their power, preferring to interfere as little as possible with the nuclear family.

The common view held by these courts and tribunals was to treat the problem as a matrimonial dispute to be solved by the parties, either by reaching an agreement to renew their relationship or by deciding on a permanent separation. The violent behaviour was perceived as just another of the couple’s problems that had to be solved by the two parties involved. A judicial intervention was considered to be counterproductive.

The new legislation takes a radically different view of the matter. Violence in the family is seen as too serious a problem to be left for a future solution. It was made quite clear to the legislature that unchecked violence tends to escalate, sometimes with fatal results either to the victim or, less often, to the abuser. Consequently, it was felt that violence should be stopped without delay. Moreover, the legislation addresses itself not only to violence against a spouse, but also to violence against a child, a sibling or an aged parent.

25 There is yet no official translation of this law. The official Hebrew version was published on 28.3.1991, *Sefer Hachukkim* No 1352 of 5751–1991 at 138.

26 The law includes in this kind of behaviour also sexual offences, even if they do not include physical violence; the assumption is that such behaviour is also psychologically damaging.

(a) To whom does the new law apply?

The law applies to spouses, common-law spouses, divorced spouses, parents and children, grandparents and grandchildren, siblings, uncles or aunts and nephews or nieces.²⁷ It also applies to minors and vulnerable people²⁸ and to those in charge of them.²⁹

The petition is presented generally by the victim, or by a relative of the victim,³⁰ who applies to the court³¹ for an emergency measure against the abuser. Since the victim can be a minor or a mentally handicapped person, the petition may be presented on behalf of the victim by any of the relatives mentioned above, by the Attorney General, or by a welfare officer.³²

(b) What kind of injunctions might the court order?

The Court has a choice between four different types of injunctions³³ to which it can add certain conditions,³⁴ as will be explained below.

The four types of injunctions are as follows:

- (i) To prohibit the abuser from entering a certain place (generally the home of the victim) or from approaching that place, even if the abuser was also living there;
- (ii) to prevent the abuser from harassing the victim in any way or in any place;
- (iii) to prevent the abuser from disturbing in any way the victim's use of any property which he is entitled to use, even when the abuser has also a right to use the same property (this measure may apply, for example, to the free use of a family car);
- (iv) to prevent the abuser from carrying or holding a weapon (either a firearm or a cutting weapon).

From the viewpoint of the abuser the most serious injunction is clearly the first one, which may force him/her out of the home. It is difficult to predict how often the courts will resort to this kind of order. Professional witnesses who appeared before the Knesset's Committee of Legislation³⁵ assured the Committee that this kind of injunction has the most serious impact on the behaviour of a violent relative. It often makes him or her more receptive to the fact that she or he is indulging in a pattern of behaviour that must be immediately stopped and that professional treatment is required.

27 Section 1 of the PVF Law, definition of "spouse" and "relative".

28 Above n7 and n8.

29 Above n9 and n10.

30 Section 3 of the PVF Law.

31 District Court or Magistrates Court, as established in Section 1 of the PVF Law.

32 Section 3 of the PVF Law. The welfare officer may petition only for minors.

33 Section 2(a) of the PVF Law.

34 Section 2(b) of the PVF Law.

35 The committee where the law was studied after its preliminary reading at the Knesset's Plenary, and where it was later prepared for its three subsequent readings.

The other kinds of injunctions are complementary means to enhance the safety of the victim; they might also be successfully used against abusers who are not cohabiting with the victim.³⁶

The court can add certain conditions to the main injunction orders, such as requiring a bond for good behaviour or providing for any other condition deemed to be necessary in order to secure the safety of the victim.³⁷

Lengthy discussions were held by the Committee of Legislation concerning the question of whether the injunction should be accompanied by counselling or some other treatment requirement. Because of the uncertainty as to whether these remedies could readily be made available to all abusers, the question was left to the discretion of the courts and it was not specifically included in the law.

(c) When will the Court give an injunction according to the PVF Law?

Section 3 of the new law declares that an injunction might be issued in one of these circumstances:

- (1) If immediately prior to³⁸ the date of the petition for an injunction an act of violence or a sexual offence was committed by the abuser against his or her relative; or
- (2) if the behaviour of the abuser was such that there is a reasonable belief that s/he might seriously endanger the physical integrity of his/her relative or that s/he might commit a sexual offence upon the relative.

(d) Proceedings and the term of the order

According to Section 4 of the PVF, the court may issue an injunction after an “ex parte” hearing. A normal hearing must take place as soon as possible and not later than seven days after the ex parte injunction is issued. During this second hearing the court is entitled to change the order, cancel it or leave it in force for the time it decides. The maximum term of an order is three months; the order may be prolonged for a second term of three months only once.³⁹ It should be noted that the court is entitled to extend the order, after the first seven days, even without hearing the defendant if, after being duly summoned to the hearing, the defendant chooses not to appear in court, or cannot be summoned because he or she is in hiding.

36 In the case of divorced or separated spouses, for instance.

37 Section 2(b) of the PVF Law.

38 The Hebrew word used might be interpreted as meaning from a few hours up to a few days, but certainly not more than a week, preceding the date of the petition.

39 Section 5 of the PVF Law.

(e) Infringement of the injunction

Infringement of a court injunction given according to this law is treated according to the rules set out in the Contempt of Court Ordinance.⁴⁰ These rules authorise the courts to punish the infringer either by imprisonment or by fines, or by both.⁴¹

The PVF Law is innovative regarding the infringement of an order prohibiting an abuser from entering or approaching a given place (the first kind of injunction that may be given.) Upon receiving a complaint of such an infringement, the police may, at their discretion, arrest the person.⁴² By doing this, the new law has considerably extended the powers of the police to arrest without a court warrant.

(f) Preventing the misuse of the law

There is always a danger that the law might be wrongly exploited by a vindictive relative, who might try to manipulate the law for personal advantage, when in reality there was no instance of violence (that is, during a divorce proceeding, in order to pressure the other partner to accept an undesirable settlement). In order to prevent this danger, the court may order a petitioner to pay both the costs and damages caused to an innocent relative as a result of an unjustified petition for an injunction.⁴³ It is hoped that this will deter people from wrongly petitioning the court for an order that might, in some cases, lead to the temporary eviction of a person from his or her lawful abode.

5 SUMMARY

Too short a time has elapsed since the enactment of the law to evaluate its effectiveness as a preventive measure against violence in the family. The existence of these new measures has been publicised mainly by voluntary women's organisations, legal aid officers and social workers. It seems to us that in order to give the new law a fair chance to work, it is imperative that the courts and the police become more acquainted with the special purpose of the new remedies made available to them, with the special characteristics of violence in the family circle, and with the short and long term dangers of such behaviour for the people affected by it.

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40 Drayton, *The Laws of Palestine* (1933), Vol 1 at 356.

41 Sections 5 and 6 of the Contempt of Court Ordinance. These are considered "civil penalties" for infringement of a court's order. Concurrently the party may be convicted of the offence of contempt of court according to Section 287 of the Penal Law, 5737-1977.

42 Section 7(b) of the PVF Law.

43 Section 11 of the PVF Law.

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