The Minor in Law

Judge Elyakim Rubinstein

Children today are increasingly gaining independent status and they are considered as a separate entity, from the very fact of their being human beings. This is manifested in various legal fields, in legislation, in caselaw and in literature. This lecture describes how the Israeli legal system has internalized the fact that in any situation, the child's will should be taken into consideration, as much as possible, and that the child should be granted appropriate representation, when it is required.

The lecture opens with a clarification of the definition of minority, explaining that there is no uniform age threshold and that this depends mostly on which area is under discussion. E.g. there is no similarity between the minor's age with regard to criminal responsibility and an adopted minor's age with respect to the need for his consent to be adopted. This subject has implications in relation to "the child's welfare" and "the child's rights", two principles which are milestones in matters concerning the minors' fate. The lecture reviews these two principles via the International Convention on the Rights of the Child, the Israeli legislation and its current interpretation in caselaw.

The lecture also deals with the child's right to be heard and the necessity that appropriate weight be given to his opinions on matters which are crucial from his point of view. Likewise, the child's representation in the various judicial processes is discussed together with the subject of equality and discrimination in education. In addition, the lecture discusses difficult adoption matters and children's claims for tort damages against their parents.

Another important matter discussed in the lecture is criminal law. The lecture addresses the culture of delinquency among minors so widespread in Israel, and dilemmas arising in relation to the manner of judging and punishing minor delinquents today. In the course of this discussion, various offenses including sexual offenses, violence, drugs, etc. are examined, with respect to the ways of treating juveniles who are guilty of these offences, their rehabilitation and the nature of the rehabilitating institute. From here, the discussion continues to the issue of interrogating minors and the problem of summoning them as witnesses in the criminal process.

The lecture ends with an important suggestion for organizational rapprochement between various bodies responsible for dealing with children and youth, and with the aspiration for improved attitudes concerning the judicial system from its various critics, particularly in the field of family law and children's rights.

The CRC Legislative Committee and Israeli Caselaw

Tamar Morag

In 2004, recommendations were presented by the Committee for Reviewing the Basic Principles in the field of The Child and the Law, and their implementation in legislation, headed by Judge Saviona Rotlevi. Over and above the array of concrete recommendations for legislation appearing in the committee's reports, the importance of the committee's work was manifested in it being the first organized attempt to form a broad perception of the features of children's rights in Israeli law. The committee's influence, in practice, on Israeli society and law should be measured not merely via the acceptance of the proposed draft laws, but should also include much wider examination of its place in public and professional discourse and in caselaw. This article will examine the influence of the committee's reports in one field: courts' rulings.

Wrongful Pregnancy

Amos Herman

Wrongful pregnancy is the result of a failed sterilization of the father or the mother, of negligent abortion, of misdiagnosing pregnancy or of failed contraception leading to an unexpected birth. The discussion opens with a description of the reasons for a wrongful pregnancy and continues with the parents' causes of action for damages they have incurred as a result of unexpectedly giving birth to a healthy child.

The article reviews the various approaches in relation to the right to a claim and to its scope. The article begins with a critical description of the full compensation approach. The article specifies the type of damage incurred by the parents and their right to appropriate compensation. On the other side of the full compensation approach lies the approach totally denying the parents' right for a legal claim in cases of wrongful pregnancy due to considerations of morality and public feelings. Between these two extreme approaches there are intermediate approaches of recognizing a partial compensation for the parents' damages. The intermediate approaches are based on legal considerations (the general benefit) and the deduction of the joy of raising the child from the resulting expenses. Other considerations are based on distributive justice and on the allocation of public health resources in a manner that does not grant the parents any compensation for child raising expenses.

In the course of this review, the issue of negatively affecting the parents' autonomy and their obligation to minimize the damage is also discussed, and the influence of the rationale for the desire not to have another child on the parents' right to a claim is examined. The article also examines the special cases of giving birth to a disabled child and the attitude towards the disabled child's parent, as well as the reasons for their special rights based on the physical handicap.

A review of the comparative law is included in the article. In conclusion, the article offers a recommendation on the appropriate compensation.

Acknowledging the Child as an Independent Entity – a Proposal to Amend the Adoption of Minors Law 1981

Mili Mass

The proposed law views the child's connection to his genealogical linkage as a crucial need, and its preservation as realization of the recognition of the child as an independent entity, which is the purpose of the principle of the child's welfare. The proposal opposes the perception underlying the current law, which views the realization of the starting point of the principle of the welfare of the child according to which the child is not his parents' property, as realization of the entire principle. Instead of the parents' ownership of the child, the present law

transfers him to the ownership of the state as if he were an atomistic and detached entity. In practice, the sovereignty in the adoption proceedings is granted to the state and not to the court, whose intervention is held back by current law until after the state's intervention in each and every stage of the legal proceedings. The proposed law brings forward the court's intervention, positioning it not later than 24 hours after the state takes any legal step.

From 2006 onwards, proposals for changing certain sections in the adoption law were drafted, which emphasize the protection of children's rights, according to their various definitions. The law proposed in this article does not utilize the language of rights, which – by definition – are universal and do not require the testimony of the child himself. According to the proposal, the child participates as a party in the legal proceeding that considers the future bond between him and his parents, and the proposed law mandates representation of the child at all stages of the proceeding, without limitation or condition.

The proposed law also requires a change in the institutional mechanism for implementing the law and the principles of this change are specified in the proposal.

Treating Sexually Abusive Children in Light of the UN Convention on the Rights of the Child (CRC)

Iris Adania-Netz, Talia Etgar

The handling of sexually abusive children, who do not bear criminal responsibility due to their age, is in the hands of the welfare system. The welfare officer refers the abusive child for treatment. The aim is to reach an understanding with the parents regarding the need for treatment and to cooperate with them. In the absence of the parent's consent, the only way to force the child to undergo treatment is via the various treatment centers mostly operated by voluntary associations. One of these is the center established under the initiative of the ELEM Association, in collaboration with the Ministries of Education and Welfare (hereinafter “the center”), with the aim of assisting Israeli society in coping with the problem of sexual violence among children under the age of criminal liability. The reason for establishing the center, the first of its kind in

Israel, is rooted in the belief that acts of sexual violence can be stopped and that it is our duty, as a society, to prevent such violence. In view of the fact that the State operates very few unique therapeutic programs for sexually abusive children who do not bear criminal liability due to their age, we have attempted to assess the nature of the treatment provided at the center via the perspective of the Convention's content and the rate of its success in providing appropriate solutions to the children referred to it. We shall present and analyze the therapeutic process undertaken at the center for sexually abusive children in the light of the Convention's principles: the principle of equality, the principle of the child's welfare, the principle of life, survival and development and the principle of participation, and above all in view of the right to dignity, which constitutes the ideological basis and infrastructure of the entire Convention. This article is a harbinger in examining the link between therapeutic language and the legal framework in the field of treating sexually abusive children.

Child Support: New Trends

Yair Shiber

Today, the vast majority of claims for child support presented to the Courts for Family Affairs are against Jewish fathers who are liable for child support for their minor children in accordance with their personal law.

According to Jewish law, the rule of thumb is that only **the father, and not the mother**, is liable for child support. It will be observed that according to Jewish law the father, and not the mother, is liable for the various obligations regarding his children. There is no disputing that Jewish law and caselaw decided in accordance with that law do not today balance the obligation for child support between the father and the mother in an egalitarian and just manner.

Thus, there is a need to examine anew the current practice, comparing the Jewish law and the civil law. In relation to civil law, this need became even greater after the enactment of the Basic Law: Human Dignity and Freedom, 1992.This law has elevated the principle of equality in Israeli law to a central prevailing principle of law.

The article reviews the attempt made by the legislator, as well as the courts, to bring about equality, as far as possible, in liability of parents to support their children. The article also discusses the validity and incidence of these attempts in view of the current law.

Inter-Cultural Aspects and their Influence on Professionals in the Context of Locating Child Victims of Abuse and Neglect and of Mandatory Reporting

Shmuel Goldshtein & Rina Laor

The article examines the approach of Israeli welfare services in r coping with child abuse and neglect, in light of the enactment of mandatory reporting in the Penal Law. The article raises difficulties in implementing the law's provision in light of multiculturalism and difference in values characteristic of Israeli society. Following examination of the unique struggle of various ethnic groups with the issue of damage and abuse vis-à-vis family values, the article points out the tension between all these and the universal approach reflected in the law's provision. The perception of family values among the various ethnic groups creates a discrepancy with the basic assumptions on which the perception of the mandatory reporting law is based. While the legislator's perception views directing the victim for assistance by means of law and enforcement authorities, as being the preferable path to treatment, the ethnic group tends to treat its victims while preserving the family structure and ensuring that it remains intact. The legislator's solution could negatively affect the authentic family's perception of family values, and thus, it might be difficult – or even impossible – for those groups to find a solution to their problems in this law. This article suggests revision of the manner in which welfare authorities handle this issue, and shifting the center of attention from fulfilling the mandatory reporting to treatment which includes cultural ideas, which would enable these ethnic groups to cope with the damage incurred by the children while preserving their values and world view. In accordance with a new approach acknowledging minority groups and enabling them to self-realization in accordance with their world view, the professional

intervention should be focused on the service supplier (the social worker) and not on changing the client (the victim and his environment).

Mandatory Reporting of Child Abuse in Jewish Law and in Comparison to Israeli Law

Benjamin Shmueli

Some countries around the world implement mandatory reporting to enforcement authorities of children abused by their parents, family members or other individuals in charge of them. Some support imposing such obligation (on the entire public or on professionals treating the family) while emphasizing the child's rights, welfare and saving the child from the people whom he is meant to trust and who abuse him. Some oppose this obligation for fear of harming the autonomy of the family unit, of interfering with individual liberty, of harming the livelihood of the professionals and of false reporting.

This paper presents a balanced approach expressed by Jewish law on this issue. This approach was formulated mostly in the Responsa literature over the past two decades, during which time children's rights gained wide recognition in Israel and around the world. Jewish law praises, on the one hand, the importance of reporting and treatment of child abuse and the religious principle of distancing a transgressor from prohibition; but, on the other hand, prefers, as much as possible, reporting and treatment within the community institutions, as long as there is no immediate danger compelling external intervention of the enforcement bodies. This attitude is based mostly on the traditional structure of the Jewish community and on the concern that such collaboration with the authorities might have undesired influences and cause harm, in the end, to the community and to the family.

This paper points out various intersections between Jewish-Religious law and Israeli – non religious law, which also includes a possible method of mandatory reporting to welfare authorities, and not necessarily to enforcement authorities, and which also obligates reporting on extreme abuse but not necessarily on any violent incident. Some similarities (although not truly identical) between these two legal methods are presented, in spite of their

different points of departure. Some of the differences are due to the special nature of the Jewish community, which has always strived to preserve autonomy, and has been very suspicious of authorities' intervention, attempting to resolve its matters and internal problems independently.

Mandatory Reporting: A policy Without Reason

Gary B. Melton

Decades of research and clinical experience have passed since the United States adopted the law of mandatory reporting proving that the approach which lead to the practice of reporting lacked an assessment of the extent of the phenomenon of child abuse and maltreatment. The author argues that supporters of that approach were wrong in understanding the problem's complexity, thinking that it would be possible, through imposing mandatory reporting, to find and characterize the abusive families via less common and clear behavioral syndromes. As a result, lack of identification of many incidents of abuse not falling into the category of severe cases, has led to meant that objective of the law has not been realized. On the other hand, the more correct approach, which views the child abuse itself – and specifically, its extreme manifestation – as the problem's focal point, considers wrong the approach, under which reporting of the problem and extreme treatment by way of transferring the child to a safe place, far from the source of abuse, will fulfill society’s obligation and terminate its handling of the problem. The author criticizes the development of a "reporting culture" which could divert the attention of social service providers from dealing with the problem to resorting to legal proceedings. Nevertheless, the author attempts to cope with the question of how it might be possible to also reach the more common cases and which practice is more appropriate for implementing the welfare policy for children experiencing abuse and neglect. Among the other things, he suggests forming a supportive community environment, which is not dependent on specific reporting, which may violate the victim's privacy and create unnecessary tension in the community.

Mandatory Reporting of Offenses Against Minors and Helpless Persons and the Empowerment of the Welfare Officer: A Retrospective View

Judge Techia Shapira

In 1989 the amendment to the Penal Law enacted mandatory reporting on maltreatment and abuse of children and helpless individuals. This obligation binds everyone, including professionals, people in charge of minors or other helpless individuals, as well as any educational or therapeutic team working with them. This legislation on mandatory reporting has resulted in many achievements, including an improvement of public awareness of the need to protect minors and helpless individuals, the granting of immediate protection to victims and prosecution of offenders.

This paper discusses a number of dilemmas surrounding mandatory reporting; including the concern that mandatory reporting may constitute an interference in family life and undermine the foundations of this protected unit, versus the rights of the offended minor, his welfare and needs. The need for balance between the two – interference in family affairs versus the minor's rights – is a guiding principle in the proposals presented in this paper.

Another issue discussed in this paper is the question of expanding the authority of the welfare officer and the decision that he would be the main address for reporting rather than the police. Such a determination could generate a more professional and devoted handling of the reports received, improve interrelationships with law enforcement authorities and prevent possible damage caused by reporting first to the police – including false reporting, blocking a therapeutic channel – and avoid non-reporting resulting from aversion to report to the police.

The paper also discusses the need to accompany abused minors in general and to provide for such accompaniment in appropriate legislation with state financing and sponsorship in particular.

By her Death, She Enabled Many Children to Live: Mandatory Reporting of Offences Against Children – Background, Review and Substance

Yitzhak Kadman

Mandatory reporting of violence, neglect and abuse committed against children was enacted by the Penal Law of 1989. This legislation brought to an end, to some extent, a long period of denial of the existence of child abuse in Israel. The legislative procedure was deeply influenced by a case of abuse which ended in the death of a little girl named Moran. Although the process was not free of problems and difficulties, at the end of the day the progressive legislation placed Israel, in this respect, side by side with other modern states that have changed the general attitude of society regarding child abuse via legislation. Despite some problems in the implementation of this obligation and in bringing it to public awareness, this is lifesaving legislation, literally speaking.

Therapeutic Versus Penal: Mandatory Reporting Law in Child Protection Officers Perspective

Miriam Faber

An important amendment in the Penal Law was passed in the Knesset at the end of 1989 – mandatory reporting on abuse of minors and helpless individuals. The major role in the implementation of this amendment was given to welfare organizations, in general, and to child protection officers under the Young Persons Law, in particular.

Following the legislation of mandatory reporting, there has been a considerable increase in the number of reports; many incidents of severe child abuse and pathological behaviors of extreme violence and sexual abuse have been revealed, and this goes far beyond what was known prior to the amended law, both in quantity and "quality". The child protection officers' therapeutic focal point has shifted to massive occupation in criminal matters. This has

brought about a destructive invasion of privacy among good, innocent families that have been in distress and needed help, and it has negatively affected the status and function of the child protection officers, because they were now considered "informers" and" collaborators" working for the authorities. In this state of matters, the child protection officers' job has changed dramatically and they have had to learn to use legislative provisions and how to interpret them in order to protect the children within criminal proceedings. The lecture focuses on detailing the developments and difficulties and on the proposals for amending the present situation.

Mandatory Reporting of Offences against Children and Helpless Persons: Outcomes and Thoughts Following the Discussions of an Interministerial Team

Anat Assif

Mandatory reporting of offences against children and helpless individuals was added in 1989 to the Penal Law 1977. During the 15 years since mandatory reporting was introduced, much practical experience in implementing the provisions of the law has accumulated, the lessons from which are, inter alia, set out in this paper.

An Interministerial team that was formed at the initiative of the senior welfare officer for juvenile law in the Ministry of Welfare, has examined a number of matters and proposals for legislative amendments involving the provisions on mandatory reporting, in collaboration with other officials from various government ministries and others. This paper reviews those subjects, including the dilemmas and various opinions, and recommendations for the future. One of the matters discussed by this team was the proper interpretation of section 368D(f) in the Penal Law, on the welfare officer's obligation to pass on a report received from the police, for example – even when it became clear that no offence took place. Another question derived from this was whether to grant welfare officers discretion not to pass on reports to the police in relation to certain offences, even without going through the exemption committee.

Another topic discussed was reports arriving to the police rather than to the welfare officer – a choice granted to the reporter and which could be merely coincidental. In such cases, it is impossible to turn to the exemption committee and prevent, or postpone, the commencement of a criminal proceeding following the incident, with the consequential implications. The group further discussed a private proposed law, for expanding mandatory reporting to cases of sexual offences among minors in the family. The proposed law, presented to the Knesset at the initiative of The Council for Child Welfare, tackled a delicate dilemma of a family having to disclose their abusive child, and provided that mandatory reporting will be applicable in such cases as well, and the authorities will be called to intervene. The dilemmas discussed and principles formed by the team, and later in amendment no. 94 in the Penal Law regarding this matter, will also be reviewed in this paper. And finally, the team recognized that the exemption committees, which were authorized by law to exempt a welfare officer from passing on a certain report to the police, lack defined procedures provided for in legislation. In view of their important and delicate job, it was, and still is, proposed, to regulate the work of the exemption committee through secondary legislation or through rules.

The team did not summarize its work with agreed recommendations for legislative amendments, but the opinions heard in the discussions served as a platform for the government's stance in Knesset discussions towards amendment no. 94 to the Penal Law.

The Conditions for Exempting Welfare Officers from the Obligation to Report Offences against Children to the Police

Drora Nahmani Roth

Mandatory reporting is a statutory obligation to report on offences of abuse and maltreatment of minors and helpless individuals. According to the law, the report can be made to the welfare officer or directly to the police. Welfare officers are authorized to refer reports they receive to special committees having the authority to grant exemption from passing the report to the police – these are the

exemption committees. The exemption committees were indeed formed in accordance with the law, but there is no reference in the law or the regulations to their ongoing work and its details, including to standards for granting exemption, to the question whether a temporary exemption can be granted, and more. Therefore, "oral law" has developed over this matter.

The article focuses on the activity of the exemption committees, on their authority to grant exemption from reporting and on criteria formed for granting exemptions, and it also cites examples of cases discussed in committees regarding minor victims and offenders as well as helpless individuals;, the common denominator being the focus on considerations of the welfare of the minor or the helpless person.

At the margins of the article, there are presented views regarding the importance of the exemption committees' activity, and the need for careful balancing between the public interest in reporting to the police with the consequential opening of an investigation, and the interest in granting exemption in order to protect the minor or the helpless individual.

To Report or Not to Report – That is the Question: A Discussion on Mandatory Reporting in Different Public Systems and Among the General Public

Round Table

A. Mandatory reporting in the educational system – Shoshana Zimmerman & Betty Rytwo; B. Mandatory reporting in the health system – Nirit Pessach; C. Mandatory reporting among the general public – Mira Karni

Mandatory reporting was legislated in 1989. This obligation bears numerous implications spreading over various fields. This obligation applies to workers in the various public sector systems, including the educational system, the law enforcement system and the general public.

Some twenty years after the legislation of mandatory reporting, we are still in the midst of the process of integrating it, while there are quite a few obstacles on the road and there is still a need to find solutions that will suit each of the systems involved, in order to improve its implementation, so as to benefit children as much as possible.

Members of the panel come from in various fields and represent a variety of systems. Each one of them will present his stance regarding the dilemmas and difficulties arising from mandatory reporting in his field of expertise, and he will present proposals for possible changes in legislation from his unique point of view.