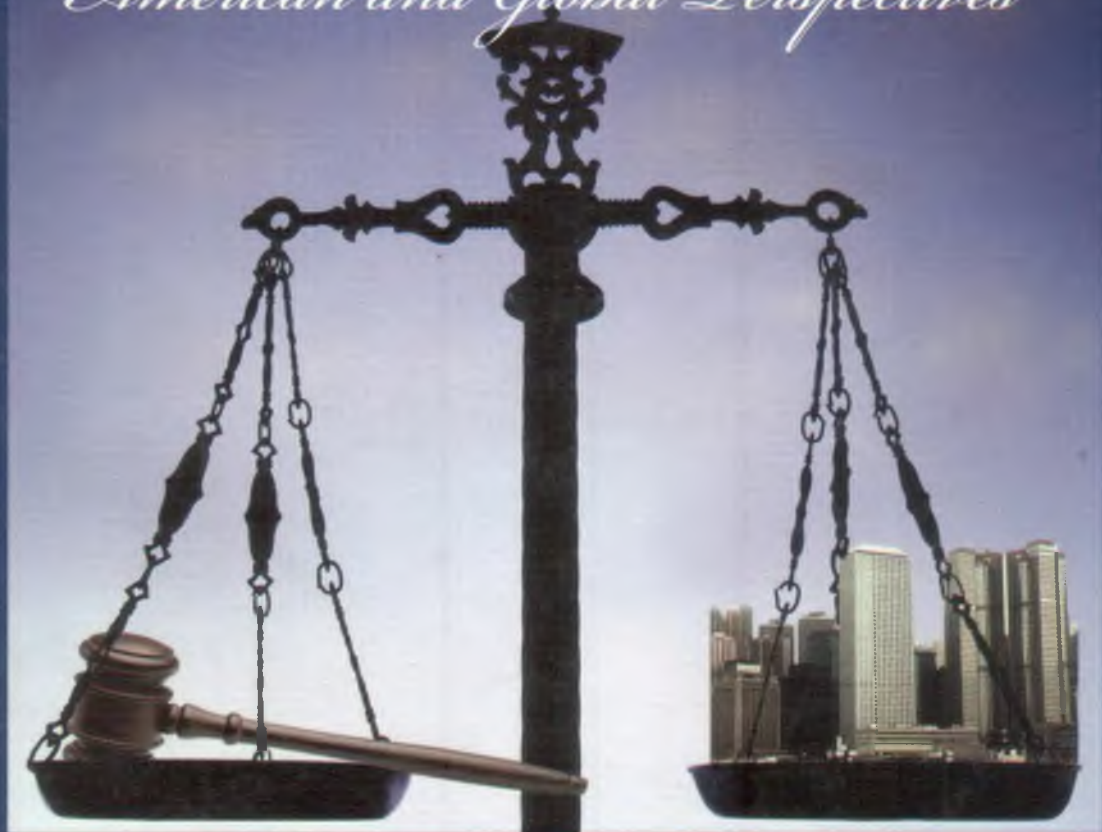


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American and Global Perspectives



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to regulate this movement. Until the mid-twentieth century, adoption usually did not mean a change in nationality, although adoption across national boundaries typically cuts ties between a child and the birth family. Regulation of intercountry adoption has shadowed and intersected with immigration policy, domestic race relations policies, and domestic adoption policy.

—Susan Sterett

See also Adoption; Asylum, Refugees, and Immigration; Cultural Identities; Discretion in Legal Decision Making; Family Relationships, Sociology of; Geography, Law and; Human Rights, International; Nation Building; Race and Ethnicity; Social Contract

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INCEST

Incest, sexual intercourse between closely related individuals, has been a taboo in most societies, primitive and modern. The concept of what constitutes close relatives, however, is not uniform among societies. At one extreme lie the Trobriand Islanders, who prohibit only a relationship between mother and son, allowing all others—including between father and daughter. At the other extreme are perhaps the Chinese, who prohibit marriages between people sharing the same surname, since they are considered related. Variations also occur in regions within the same country. While as many as 50 percent of marriages in southern India are between first cousins, the same is considered abnormal in northern India. Finally, levirate marriages, between a widow and her husband's brother, are not considered incestuous in most societies and are even encouraged in some.

Rules prohibiting incestuous unions, especially sexual intercourse, do not necessarily coincide with non-recognition of marriage. Thus, while marriage between two closely related persons is void in India, the same persons can engage in sexual union with impunity. Thus, incest is not a crime in India. Other anomalies exist elsewhere. English law prohibits intercourse between grandfather and granddaughter, but not between grandmother and grandson. The Tanach, the Jewish Bible, contains prohibitions (primarily in Leviticus) against sexual relations between various pairs of family members, such as father and daughter, mother and son, and aunts and nephews, but not between uncles and nieces.

In ancient Babylon, incest between father and daughter was punishable by exile; incest between mother and son was punishable by burning of both persons. In some societies, such as ancient Egypt, incest was the norm. The famous Egyptian Queen Cleopatra (69–30 BCE) married her younger brother, Ptolemy XIII (63–47 BCE). In fact, some historians claim (while others reject the idea) that the cause of the downfall of the Egyptian empire was the growing genetic defects brought about by rampant incestuous marriages in that society.

Psychology and the Use of Mythology

Sigmund Freud (1856–1939) believed that all male children between ages three and five fell in love with their mothers, a normal stage of psychosexual development. He called this the Oedipus complex, after the Greek mythological figure Oedipus, who inadvertently slew his father, Laius, and married his mother, Jocasta. Normally this psychosexual stage passes uneventfully, but if the child becomes fixated at this stage, it may give rise to psychological problems later in his life. Girls' counterpart of the Oedipus complex is the Electra complex.

Despite this almost universal hostility, incest, surprisingly, is very common in mythologies of almost every culture. Most notable is the Greek example, in which incest continued for generations. Gaia, Mother Earth, married her son Uranus (the Sky) and gave birth to twelve Titans—six sons and six daughters. Continuing the tradition of incest, Cronus, the youngest of the twelve Titans, married his sister Rhea. They had six offspring, and two of them, Zeus and Hera, married each other. Similar examples occur in the mythologies of Egypt, Scandinavia, and the Far East. Austrian psychologist Otto Rank (1884–1939), a student of Freud, interpreted these as the symbolic fulfillment of a repressed desire.

Theories in Sociology, Anthropology, and Biology

Sociologists and anthropologists have explained the incest taboo in human society in several ways. According to one theory, the taboo encourages exogamy, which encourages bonding between otherwise unrelated households; this in turn strengthens social solidarity. According to the Finnish philosopher and sociologist Edward Westermarck (1862–1939), infants raised together are desensitized later to close sexual attraction and thus are unable to form sexual feelings for one another as adults. Scholars refer to this as the Westermarck effect, or reverse sexual imprinting.

Another theory, advanced mainly by biologists, is that observance of the taboo (often incorporated into

law) would lower the incidence of congenital birth defects. Some have challenged this theory. For instance, if this were true, why would the law prohibit a relationship between a father and his daughter-in-law, who are genetically unrelated? If a genetically related couple decides to use contraceptives, should society allow such unions? Finally, genetics suggests that though initially such marriages would result in increased genetic malformations, ultimately it would tend to cleanse the gene pool. No single theory completely explains the near universal prevalence of an incest taboo in the world's societies; the truth may include elements from all.

Changing Ideas about Incest

Some argue that incest between fathers and young daughters is far more common than other forms; certainly most cases of incest that come before criminal courts belong to this type. This form has great potential to damage a child. The relationship is one-sided: one partner is in complete command of the situation, and the other, the child, is merely a silent sufferer. Based on these considerations, some have attempted to redefine the concept of incest. Certain psychologists now define incest as the imposition of sexually inappropriate acts, or acts with sexual overtones, by one or more persons who derive authority through ongoing emotional bonding with the child. This definition expands the traditional notion of incest to include sexual abuse by anyone who has authority or power over the child. It includes as perpetrators immediate and extended family members, babysitters, schoolteachers, scoutmasters, and even priests and ministers.

As divorce rates increase in many societies, the children of a former marriage suffer a risk of incest from their mother's new boyfriend or new husband. If the mother remarries, the risk of sexual abuse of a stepdaughter by her stepfather is more than eight times greater than the risk of sexual abuse of a daughter by her biological father who is rearing her. Considering the Westermarck effect, this may not be very surprising.

Treatment of offenders as well as victims, especially in one-sided relationships, is important. Treatment programs are now available in many countries for both

offenders and victims. Punishment in such cases may present serious difficulty to the courts. On one hand, the parent must be punished, but on the other hand, punishment, especially imprisonment of the father, may result not only in the destruction of the family unit but in the infliction of guilt feelings on the child for the imprisonment of the father.

—Anil Aggrawal

See also Aboriginal and Indigenous Peoples, Legal Systems of; Genomics and Human Genetics; India; Psychobiology of Crime; Punishment, Psychology of; Rape and Sexual Offenses; Westermarck, Edward

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INDIA

India's accomplishments during its fifty-plus years of independence are nothing short of astounding. Notwithstanding the country's high levels of poverty, illiteracy, and population growth, as well as a period of dictatorial rule, India today stands as a vibrant democracy promoting many classic ideals of liberalism. However, India confronts corruption and bribery of politicians, police abuse, nonperformance by and incompetence among bureaucrats, and an inadequate infrastructure.

In 1991, the government, led by the Congress Party at the time, decided to open up India's economic markets and embrace foreign investment with new vigor. In addition to having enormous socioeconomic ramifications for millions of Indians, this decision to "go global" also affected the legal profession, courts, and law and society activities. Foreigners, particularly people from the United States, had interacted with Indian judges and lawyers long before this period. For example, between the 1950s and the early 1970s, various U.S. law professors hired by the Ford Foundation traveled to India to work with local legal academics to improve the quality of Indian law schools.

In the late 1970s, U.S. and Indian lawyers worked together in an effort to build a sustained Indian public interest movement. In fact, in the aftermath of the tragic Union Carbide gas leak in Bhopal in 1984, the Indian government hired several U.S. public interest lawyers to represent victims as the litigation moved forward in both the United States and India. In the late 1980s and early 1990s, after studying the way many U.S. law schools emphasized the importance of merging theoretical and clinical training to educate students, a set of entrepreneurial Indian law professors started up a new group of Indian law schools that sought to follow that model.

In the 1980s, India formally adopted a system of alternative dispute resolution with an institution known as the *lok adalat* (people's court) serving as the main dispute resolution forum. Reformers believed a more accountable system than the courts could offer structural assistance for those groups that wished to resolve issues in a less adversarial and more efficient manner. There are many different types of *lok adalats* today, each one focusing on individual civil or criminal matters. A study by Marc Galanter and Jayanth Krishnan has evaluated how these forums function, but the preliminary data from this project indicate that the *lok adalat* system suffers from several serious problems. For example, there are often huge power differentials between the opposing parties, and these differentials place into question the fairness of agreed-on settlements. In addition, arbitrators often seem more concerned with disposing of cases than with reaching equitable resolutions. There are questions about whether poorer claimants have their



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