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Prevalence, Theoretical Framework and South African Legislative Measures on Child Sexual Abuse and Incest

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Abstract. Background Child sexual abuse and incest are the worst crimes and offences against children and the vulnerable in the society. These have continued to plague South African communities and a major social issue for social workers. The study drew from previous findings on psycho-social effects of father-daughter incest which was conducted in fulfilment of a Masters studies. As well as how it affected the offender and the family. **Objectives and Purpose of the study** The study attempted to understand how incest manifest within and across nations, how the family is affected and what role it plays in an incestuous relationship as well the sanctioning of such social abomination. Social Work intervention is also scrutinize particularly in support of the family. **Methods** The study emanates from a Masters research undertaken where qualitative approach was utilized to determine psycho social effects of incest. This piece of work looked at the prevalence and nature of incest, theoretical framework in respect of incest as well as South African punitive measures on child sexual abuse and incest. These were discussed as themes with subthemes.

Keywords. Child, Child sexual abuse, incest, law, legal, vulnerable

Introduction and problem statement

Incest is classified both as a social ill and criminal offence in many nations as well as in South Africa. It is a gross and abhorrent offence to engage in sexual relations with children particularly as they cannot give consent because of their age, thus falling prey to unlawful sexual acts. South African Criminal Law 32 of 2007 (12) (1) describes incest as an illegal and deliberate engagement in an act of sexual breach among persons who may not legally marry each other on account of consanguinity, kinship or adoptive relationship. European countries like Canada, USA, Australia, Britain, Scotland, Sweden, New Zealand including South Africa have incest prohibited and punishable by law (Miller, 2012). Sexual offences against children, identified amongst social crimes, constitutes 51.9% in 2011, according to STATSA. According to the Institute for Security Studies, most of the victims of crimes committed against children are between 15 and 17 years old. The organisation noted that in the case of the most prevalent crime against children, 20 141 cases of sexual offenses recorded during 2008/9, 60.5% were committed against children below the age of 15 years whilst 24.9% of these sexual offenses involved children aged 0-10 years.

In Gqabi and Smit (2019), Mbokazi (2005) is quoted, “incest incidences may be at least 50% higher in South Africa as compared to North America, which may be interpreted as one quarter of sexual abuse cases amongst females in South Africa “. Instances of mother-son, father-son and mother-daughter incest have equally been broadly reported (Crosson-Tower, 2014; Friedmann & Faguet, 2012). A case was reported in the local newspaper, The Citizen in June 2015 of a 55 year old mother who had sexual relations with her 23 year son. Despite this reporting, it is widely reported, and it appears that father-daughter incest is by far the most commonly reported as seen in (Figley, 2013; Finkelhor, 2010; Friedmann & Faguet, 2012).

From Crause (2010) perspective about 70% to 80% of reported incest cases occur between daughters and their stepfathers or biological fathers. The manifestations of incest challenge conventional views which see the family as a safe shelter for children (Mtshali, 2010).

Child Line indicates that of all child sexual abuse cases reported worldwide, 80-85% occur within the family (Lentz et al., 2014), with girls being at a greater risk. In South Africa, studies show that incest accounts for approximately 30% of all child abuse cases, according to Craft-Rosenburg & Pehler, 2011) with father and daughter incest being the highest reported.

Material and methodology

This study was conducted qualitatively in a Masters study embarked upon and the literature derived from the project. Ethical clearance was received from the university and the necessary permissions obtained from relevant bodies. All material and resources used were originally sourced from the library, thesis and the web. In this study no participants were involved and the legal aspect was added to indicate that perpetrators of incest and child sexual abuse do not go unpunished for this heinous offense. The design is explorative and explanatory by nature as the study seeks to highlight the averse results of child sexual abuse and incest on the victim and the family as well as measures to address the phenomenon.

Themes and sub-themes were developed for easy comprehension and the table below indicates how these were mapped out.

Themes	Sub-Themes
Nature and Prevalence of incest	Western and African Context Prevalence of father-daughter incest Traits of families of incestuous situations Effects of child sexual abuse and incest
Theoretical Framework	Systems Theory Trauma theory Ecological theory
Punitive measures of incest	Policies and Acts
Social Work Intervention	Statutory support Counselling Rehabilitation

Theme 1: Nature and prevalence of Incest

Sub-theme 1.1 The Western context

In Gqabi & Smit (2019), Crause (2010) states that the past, the media and professionals viewed and described incest as some sort of fantasy or myth. Historians, on the other hand, noted a dramatic shift in the western society’s reaction to incest between 1880 and 1914 (Smith, 2004). The discovery of father-daughter incest in towns across America provoked righteous

anger as well as immediate response during the late 18th century. During the 19th century, Americans had a shocking familiarity with accusations of father daughter incest. This resulted in western cultures beginning to call attention to the innocence of childhood and progressively working to protect children from social harm, by adopting legislations designed for child protection. In Wikipedia (2014) reports some difference in the legality of incest in the Western region where France dropped incest as an offence and reclassified it in 2010-2011. Countries like Spain, Russia and Portugal do not perceive incest as illegal, whilst Sweden and Switzerland prohibit incest and Australia and New Zealand has a 7-8 years sentence respectively on incest cases.

The African context

Some regions in Africa, there do no use identifying terminology for incest. Emezue, Kosch, & Kangel (2014) maintain that incest is an abhorred act that is seen as demeaning and diminishing human dignity and causes harm.

In South Africa, incest was the most neglected and misunderstood form of sexual abuse given that it has been depoliticised and viewed as a family matter, a personal problem as well as a women's issue Depoliticising and treating incest as a family matter or personal problem was opposing "Ubuntu's principle that a person is a person through other persons which denotes that the personality of an individual is formed interdependently through the community. However, incest is being viewed as a serious offence and it is categorized as Child Sexual Abuse when it occurs between adults and those who are under the age, which in South African laws are those who are below 18 years. This indicates that legal measures are taken to address incest in today's society. In the African belief, if prohibited acts such as incest are done, adverse consequences follow (Izibili, 2009). In Zimbabwe, All Africa Global Media and from Zimbabwe National Statistical Agenda (2020), it was revealed that in 2018, in the 4th quarter 7738 rape cases including incest were reported. In Somalia, a perpetrator of incest was stoned to death (Anon, 2010), whilst Zambia imposes a 5 year imprisonment for incestuous acts if the victim is under age.

Sub-theme 1.2: Prevalence of Father-Daughter Incest

Child sexual abuse and incest manifest in five stages according to the New York Child Welfare Training Institute (2005). These stages are identified as, the engagement stage, sexual interaction, secrecy, disclosure and the post disclosure/suppression stage.

The engagement phase

When fathers spend a lot of time alone with the children particularly daughters, sexual tendencies may develop. This happens when mothers (wives) are not present, thus a sexual relationship develops over time (Finkelman, 2013). The author has found that the father adopts and tests persuasive ways to lure the daughter and the abuse results. Fathers experiment with sexual activities with their daughters to see how proximate they can be and how the daughter reacts to this kind of behaviour (Zastrow & Kirst-Ashman, 2010). According to the New York's Child Welfare Training Institute (2005) opportunities for the fathers and daughters to be alone may be accidental in the beginning, but planned or created as time goes on.

The sexual interaction stage

This stage is often marked by an ongoing growth from mild to more severe sexual practices and occur in various degrees of intimacy (Sadock & Sadock; Zastrow & Kirst-

Ashman, 2010). These practices goes from fondling to oral-genital sex and ultimately sexual penetration which constitutes incestuous activity.

The reaction of family members takes different form; often compassionate or unsupportive and usually blame the victim (Taylor & Norman, 2013). Studies have found that shock and disbelief was the initial reaction to disclosure of incest, followed by denial, fear, ambivalence, guilt, self-blame and anger towards perpetrators (Saloojee, 2013).

The post disclosure/suppression stage

This is an emotionally charged stage characterised by anxiety and trepidation for both the victim and the family. The anxiety is influenced by the denial of the perpetrator and family members experiencing self-blame and insecurity.

Sub-Theme 1.3: Traits of family members in father-daughter incest situations

The father: Incestuous fathers appear to suffer from poor overall sexual functioning, they experience some type of intrapsychic challenges and/or mental breakdown, as well as a sense of low self-worth from a very young age (Crosson-Tower, 2014). The researcher is of the opinion that incestuous fathers appear to have inadequate, chaotic and disruptive personality. Often, the father has had an upbringing whereby he was emotionally withdrawn from his parents. This is influenced by experiencing rejection from his mother and abandonment by his father at a young age (Mzarek & Kempe, 2014). He may be overwhelmed by feelings of self-hatred, anger and feelings of wanting revenge. Moreover, these fathers commonly have a history of numerous convictions for antisocial behaviour. Bancroft (2011) states that when these incestuous fathers are seen in public, they project images of being good with children, kind, humorous and outgoing. They sometimes attend only to aspects that develop their reputations of being excellent fathers in the eyes of the community and they try to show that their image does not fit with that of a sexual abuser. However, these fathers usually maintain dominant positions in their families through violence and also act very possessive of their children (Proulx et al., 2014).

Victims' *mothers* are married to oppressive and authoritarian men who behave cruelly towards them as they depend wholly on these men, a fact that prevent them from challenging their husband's pathological behavior (Schetky & Green, 2014:37). Like the fathers, many of these mothers grew up in dysfunctional and abusive families.

The daughter: No definitive profile of daughters in FDI. Most studies indicate that eldest daughters in FDI families are most vulnerable to abuse

Dysfunctional family system

Researchers have stated that dysfunctional families contribute to the occurrence of incest (Bellack, 2013). This dysfunctional family system includes sexual estrangement of couples, role reversal, emotionally unavailability of the mother, the daughter's need for care and close emotional association of the daughter with her father (Schetky & Green, 2014). The absence from home of the mother, as well as her coldness and hostility towards her husband results in sexual separation between the mother and the father and leave room open for the father to turn his attention to the daughter. The family's acceptance of male authority and patriarchy, social isolation has long-lasting effects like stress and contribute to incestuous behaviour (Proulx et al., 2014).

Individual personality/psychopathology

Some rationalisations of incestuous behaviour include individual personality or psychopathology. These individual personalities and/or psychopathology include the dominant style of an incestuous father, the daughter and the mother's passive dependant personality style and the father's poor impulse control (Trepper & Barrett, 2013).

Theme 1.4: Effects of child sexual abuse and incest

Child sexual abuse by a trusted family member, particularly a parent, causes major psychological trauma to the victim. Finkelman (2013) declares that this psychological trauma creates serious pain and long term effects in the adult life of a victim. Fear and anxiety are some symptoms that have been consistently described in children who experienced sexual abuse (Zastrow, 2017).

During childhood, victims frequently have nightmares about the incidences of their victimisation (Stroebe, 2012). They may develop mistrust, shame, doubt, guilt, a sense of inferiority and may also withdraw from their environments. Feelings of disappointment and rage, towards other family members resulting from the abuse are evident. They feel betrayed and that other family members, especially the mother, failed to protect them from the abuse. In adolescence, victims often feel guilty and blame themselves for the incest occurrence. In addition, the victim's academic performance goes down and may have difficulties in concentrating at school or even losing interest in schooling.

After reaching age 18, victims may experience continual or belated posttraumatic stress disorder and may have difficulties in trusting people and building relationships (Coleman & Ganong, 2014). This simply means that adults who were victimised during childhood have poor relational satisfaction in romantic relationships (Baxter, 2013), and prefer chaotic family experiences after leaving home (Lentz *et al.*, 2012:164).

Mothers are also affected after their daughters have disclosed their fathers' sexual abuse which include feelings of guilt and self-blame, developed rage towards themselves and their spouses. Mothers also suffer from experiencing upsetting chronic thoughts of the abuse and shame family dissolution, losing everything including the spouse and the children, financial support and suffering from mental breakdown.

Theme 2: Theoretical framework for understanding incestuous families

Family systems theory

Fine and Finckelman (2013) are of the opinion that family systems theory provides an outline for defining and understanding the relations between family members. Systems theory posits that all parts of the system are attached to each other, and proper understanding is not possible if the parts are isolated.

Family systems in which incest occurs are often closed, tend to have more structured roles and responsibilities, rigid rules as well as traditional divisions of labour. There are low or no boundaries within the family, but very high with the community. There are however some rigid boundaries to create barriers between the family environment and its social environment as means of keeping outsiders away and protecting their sexual secret.

Members depend upon each other for emotional support and self-esteem maintenance. This results in role and boundary confusion. Intergenerational boundaries are crossed in relation to sexuality and habitually in other areas such as household decision-making or management (Mzarek & Kempe, 2014). Role reversal takes place because children take the role of the parent, in this instance of the mother as attention is expressed sexually on them. The father depends on the daughter for emotional as well as sexual satisfaction and refuses to accept her

socialisation, mostly when she seeks to have a boyfriend. Daughters gain special power over the fathers and maintain a secret they consider obligatory. The blurring of intergenerational boundaries is promoted by the dependency problems and the ensnaring produced by the emotional isolation of the family (Trepper & Barrett, 2014).

Trauma Theory

Levenson (2017) cites American Psychiatric association (2013) in defining trauma as an exposure to extra ordinary experience that presents a physical or psychological threat to oneself or others generating a reaction of helplessness and fear. Social workers encounter clients from all walks of life experiencing a myriad of traumatic social problems. Incest one of those traumatic experiences some clients are confronted with. From this platform, trauma theory may lay the basis of better understanding of victims of trauma, including incest and its effects on all concerned. "Some traumas are overt, like physical and sexual abuse...can leave insidious effects" (Levenson, 2017:105).

Ecosystems theory

A combination of general systems theory and ecological perspective, this theory offers a lens for viewing case phenomenon which identifies adaptive possibilities between persons and their environment (PIE) (Du Bois and Miley, 2013). This helps in clarifying the transactional relationship that individual and in this case he family affected by incest deal with the offence in social context. The eco-systemic perspective holds that changes in a family's environment or a family member's behaviour may result in significant changes in the family system as a whole (Du Bois & Miley, 2013).

Erik Erickson theory of psychosocial development

Children in incestuous families perform developmental tasks appropriate for adults. Their personality and psychological development is at risk of being disrupted as both parents compromise their attainment of basic trust. It may well be that these children are unable to develop meaningful relationships with their peers.

Industry versus inferiority (6-12 years)

Papalia *et al* (2007) postulates that in this stage, children must learn skills that are highly valued in their societies. An opinion is held that when children fail to learn and master these skills, feelings of inferior set in. Moreover, they lack motivation, become uncooperative, incompetent and unreliable. Experiences of abuse and brutality restrict children to form industrious attitudes and aggravate their sense of inferiority.

Identity versus role confusion (12-18 years)

In this stage, adolescents self-examine themselves trying to understand and know who they are as they must establish social and vocational identities. They may also be faced with difficulty in overcoming distorted messages about sexuality.

Psychoanalytic theory

Psychoanalytic theory is a conceptual framework which makes it possible to explain past behavior (Meyer *et al.*, 2008). It describes human beings as being servants to inherent biological drives. Moreover, it presumes that failing to resolve the Oedipal complex as well as the existence of unconscious and collective experiences in childhood might carry on to adulthood and become an origin of psychopathology.

Theme 3: Punitive Measures (South African Legal Framework)

According to South African law, incest is defined as unlawful, intentional sexual intercourse between male and female persons who are prohibited to marry each other because they are related, within prohibited or adoptive relationship (Criminal Law, 2019). In simple terms, incest is an illegal immoral act of a sexual nature which occurs between persons who are related to one another. In most if not all incest cases, the perpetrator is a grown-up who abuses the young and innocent. Given, incest can occur between minors or consenting adults. In the former, punitive measures must be applied to protect the vulnerable and abused.

South African legislation make provision to cover all aspects of its citizens' needs. These legislations and act are provided in three important levels namely curative, preventive and promotive. Where some are meant, with accompanying policies to rehabilitate perpetrators and empower victims and survivors, others are more protective and punitive in nature. Thus, the South African constitution is set out to protect all its citizens regardless of race, age or gender. A few which were found relevant in this study amongst others are:

•The Constitution Act 108/1996

The Constitution of South Africa came into effect on 04/12/1997 and the 2nd amendment no. 3 of 2003. The application of the Bill of Rights as contained in the constitution in in chapter 2 and sections 8, 9, 10 and 12 (2) (a) (b) as well as 28 (d). It is a human rights charter that protects the civil, political and socio-economic rights of all people in South Africa. Every individual's rights are enshrined in the Bill of Rights and the following rights re identified namely:

- ❖ the right to equality
- ❖ human dignity
- ❖ life
- ❖ freedom and security
- ❖ personal privacy
- ❖ freedom of expression
- ❖ freedom of association
- ❖ political rights
- ❖ education
- ❖ slavery, servitude and forced labour
- ❖ citizenship
- ❖ housing and
- ❖ children- all children have a right to parental care, shelter and food. Children

may not be abused and forced into labour.

•Children's Act no. 38 of 2005

This act, as amended makes provision for the Rights of Children as contained in the Constitution section 28. It sets out principles relating to responsibilities to care and protection of children, define parental responsibilities and rights. Especially the Objects of this Act (a) (b) (i) (ii) (iii) and (iv) (f) and (i). Summarily, these sections make provision for care of children generally and specifically for the protection of children and fostering of sound and healthy family relations. This include no form of abuse, physical, emotional or sexual against children.

• ***Mental Health Care Act no. 17 of 2002***

This act was amended in 2014 (no.12) section 15. Section 1 (iii) talks of assisted mental health care user and (xix) of significance and relevant in this study are sections 2 and 3 and subsections for the perpetrator for rehabilitative purposes. The child may be referred in these sections too as mental health care user depending on her mental and emotional state at the discovery or disclosure of the incestuous act.

• ***Prevention of Domestic Violence no. 116 of 1998***

Domestic Violence Act of 2010 refers in section 2 (a) to the harm, injury or endangering the health, life, limb or well-being, whether mental, physical of the victim or tends to do so. This includes physical abuse, sexual abuse, emotional abuse, verbal abuse as well as abuse, verbal abuse as well as psychosocial abuse and economical abuse. The sexual abuse may involve incest where the father may be the perpetrator.

• ***Criminal Procedure Act no. 51 of 1997 as amended***

As mentioned, these laws are enacted differently on relevant levels and the Criminal Procedure Act 51 of 1997 as amended, particularly has punitive measures which in this study is highlighted as dealing with incest as an offence. An offence means an act or omission punishable by law according to this act section 18 (f) and as set out in sections 3 and 4 of the Criminal Law Amendment Act of 2007 (Sexual offences and Related Matters).

The Criminal Procedure Act 51 of 1997 with all it amended acts for instance the Criminal Procedure Act 5 of 1991, Criminal Procedure Act 2nd Amendment of 75 of 1995 and no. 85 of 1997 incorporating all amended acts as well as the Criminal Procedure Act of 2013 which came into effect on the 10th September 2010, is appropriate in dealing with incest as an offence.

Of importance and relevance of this act are the chapters 5, 12, 14, 23, 14, 25 and 28 which won't be discussed but mentioned for their role in bring justice to the victim. Chapter 5 deals with the arrest of the perpetrator, whilst chapter 12 handles the trial and chapter 14 the charge, which will be incest. Chapter 23 involves witness in this offence where the daughter as victim may be called as witness as well as the mother and all other relevant witnesses that can be brought forward in section 191 A (1) (2) a-d and 195 (12). Chapter 24 deals with evidence in sections 227 and 238 (1) (a) (b) (2), chapter 25 and finally chapter 28 section 276 and 283 passes out sentencing of the offender.

• ***Criminal Law (Sexual Offences and Related Matters) Amendments Act 32 of 2007***

The Act aims to incorporate all sexual crimes into one law and clearly defines sexual crimes and related matters. It sets out a uniform and coordinated approach to the implementation, and delivery of, services in terms of the laws relating to sexual offences. It provides protection to victims of sexual offences and ensures that they receive adequate and appropriate services. In addition, it identifies the roles of different departments for its implementation.

Above-named demonstrates clearly that policies are in place that may help curb and increase awareness as preventive and rehabilitative measures. However, implementation is currently a challenge that needs multi-disciplinary approach.

Restorative Justice

This aspect focuses largely on the victim and those affected the incestuous act. The Department of Social Development have various progressive programmes in place which aims

at helping the victim and their families affected by incest. Employing relevant appropriate acts, programmes like Victim Empowerment initiatives offer help and support to the affected

National Policies

• *White Paper for Social Welfare, 1997*

The DSD adopted the White Paper for Social Welfare, which positioned developmental services and programmes at the centre of policy-making and intervention processes. This policy introduced the developmental approach to social service delivery, which breaks significantly with the remedial service delivery model of the past. It is characterized by a rights-based approach, integrating family-centred and community-based services; the linking of social and economic development, participation, social development partnerships and bridging the micro-macro divide in the conceptualization of social problems and social welfare service practice. The developmental model is a process that results in some type of change or improvement of the existing situation.

• *Framework for Social Welfare Services*

The Department has made a significant shift through its Framework for Social Welfare services to the development paradigm as espoused in the White Paper. This framework is premised on the tenants of the developmental approach and as a framework it serves as a guide for reorientation of Social welfare service delivery from treatment to a social development approach, hence reference to developmental social welfare services.

• *National Policy Framework and Strategic Plan for the Prevention and Management of Child Abuse, Neglect and Exploitation*

This policy framework has two fundamental aims:

- (1) to reduce the incidence of child abuse, neglect and exploitation in South Africa, and
- (2) to ensure the effective management of presenting cases of abuse, neglect and exploration so as:
 - a. to prevent the further maltreatment of children concerned, and
 - b. to promote the healing of these children, their families and their communities.

These aims are to be achieved through the development of an accessible, integrated, coordinated, multidisciplinary and inter-sectoral approach.

Theme 4: Social Work Intervention

Under this theme a generalist approach is taken. This means that the social worker handling an incest case will apply all relevant *methods* at her disposal to intervene. Case work especially where *counselling* will take place for both the victim, the family and even the perpetrator. Intervention in this case will also include *statutory support* (statutory preparation for court appearance and statutory reports) when the case gets to court. In collaboration with the social worker in Correctional Services, during the incarceration, continued intervention will include *scheduled visits* to the correctional facility where the offender is held captive and *restorative* service for possible family *re-integration or reunification*, where possible.

Discussion

The study outlined the nature of child sexual abuse with emphasis on incest. It is evident from various material consulted that this social ill is found to be abhorrent throughout the world and what is important is that it is punishable. It is also found to be damaging to the child's development and functioning and that of the family. Different stages of development are

affected in many ways and place the child in a precarious and unacceptable living conditions, if not acted upon or reported. The theories linked to this study demonstrated the dynamics of a functional 'normal' environment versus the one where incest is prevalent. Countries punish offenders or perpetrators in different ways and the South African legal system has the necessary legislation to address crimes like child sexual abuse and incest. A child who is abused by a family member becomes overwhelmed as the trust and safety that a home ought to guarantee are destroyed

The prevalence of socio-economic challenges affect families adversely and results in dysfunctional family relationships, family disintegration and an inability to fulfil the acceptable "traditional" social functions of the family which is to nurture and care and support to family members. It is argued, rightly so that disintegration of families contributes to overall moral decay.

The Children's Act 38 of 2005 is founded and aimed at the preservation of the family as well as care and protection of children. One of the objectives in the Children's Act is that social services provided to families generally and especially families at risk, in crisis situation and the vulnerable. must be increased.

Conclusions

Child sexual abuse and incest remains a social issue globally and affecting primarily families as a whole including all its sub-systems. These repercussions include family maladjustment and dysfunction which sometimes ends up in divorce, family disintegration and some family members suffering from depression and other mental or psychological disorders, and victims dropping out of school as a result of shame or at times pregnancies resulting from incestuous act or performing badly academically and struggling to adjust on a social levels and/or suicidal tendencies. It is evident that some sexual abuse and /or incest which disadvantages and place the victims in further sexual abuse acts and giving the perpetrator undue power.

Disclosure and dialogue are needed to address this social ill, so that communities can be enlightened, supported and empowered, to equip victims and would-be victims to be vigilant, to break the silence and to demystify the taboo effect that incestuous behaviour is currently depicting. Equally, more research need to be conducted and stricter laws must be enforced which will not only punish this ill, but will rehabilitate the offenders on long term basis.

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