

CHILDREN AT RISK: INTRAFAMILIAL CHILD SEXUAL ABUSE - INCEST IN JAMAICA

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Content Advisory

This article contains explicit and graphic descriptions related to sexual violence, including rape, which some readers may find distressing. These details are included to support the scholarly analysis of legal and social issues and are presented with the utmost sensitivity to their context. Reader discretion is advised.

Abstract

Child sexual abuse is a widespread problem in Jamaica. It is without question that child sexual abuse ranks as one of the most severe violations of children's rights. High on the list of abusers are family members, related by blood, affinity, or cohabitation. Child sexual abuse by family members, intrafamilial child sexual abuse, is largely facilitated by access to the child and is arguably the most destructive form of child sexual abuse because of the perpetrator's position of trust and power over the child. Today, in many jurisdictions, intrafamilial child sexual abuse by blood and non-blood relatives including adoptive parents, and stepfathers or stepmothers is known as incest. Incest is universally tabooed. The incest taboo sends a

* Assistant Professor of Lawyering Skills, Howard University School of Law. I dedicate this Article to the men, women, boys, and girls who are living with trauma caused by incest and for whom justice is beyond their reach and dreams. I thank Ms. Janet Silvera of the Jamaica Gleaner who fearlessly sheds light on the problem of incest and whose work provided an important base for this Article. I also thank Mrs. Nadine Chaffat-Allen, Mrs. Karen Gordon, Dr. Ramona Biholar, Prof. April Christine, Prof. Anibal Rosario Lebrón, Prof. Maureen Johnson, Prof. Sherri Keene, Prof. Nantiya Ruan, and the participants of W.A.R (2022, 2023) for their helpful advice and feedback. I am deeply grateful to my former research assistant Ashley Grey whose stellar research skills, insightful comments, and dedication helped to move this Article from a thought to a draft. I am also grateful to my current research assistants Breanna Madison and Zaneika McNeil for their continuous excellent feedback. I am equally grateful for the enthusiastic support of the editors of the Southwestern Journal of International Law, especially Ernesto Bustinza. Finally, my deep gratitude to Howard University School of Law for summer research stipend and support for this Article.

clear message that incest is repugnant which causes some people to refrain from engaging in incestuous relations with children.

The incest provision of Jamaica's Sexual Offences of Act 2009 continues to define incest solely based on blood relations. This definition ignores the fact that Jamaica's primary family structure is a single female-headed household which typically includes people related not solely by blood, but also by affinity, or cohabitation such as the mother's or female guardian's boyfriend, or husband who is responsible for, and has direct power and control over the children but are not related to them by blood. It is also common for the female head of household to engage in serial partnering with temporary partners, which increases the children's risk of intrafamilial child sexual abuse. This Article argues that to better protect a child's right to be safe from sexual abuse in their home, the incest provision of the Sexual Offences Act should be revised to include persons related by affinity and cohabitation including adoptive parents, stepparents, and step-grandparents.

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I. INTRODUCTION

She was referred to in the cases as the “virtual complainant.”¹ We know the power of words to humanize, so, instead of virtual complainant, let’s call her Maria.² Maria was eleven or at most twelve years old when her mother sent her to live with her paternal grandmother.³ Maria’s father lived in another parish, but visited his mother and Maria most weekends.⁴ On some weekends, the family gathered for family night when her father visited.⁵ Maria, her siblings, and her cousins would put their mattresses on the roof and sleep under the stars.⁶ Maria’s father often took her to sleep in his arms.⁷ To Maria, family nights were a sign that her often-whispered prayers for a loving and caring family were answered.⁸

Maria’s father started to fondle her when she turned thirteen years old.⁹ She remembered that he first fondled her breast during a family night gathering.¹⁰ Maria looked at him in shock, but he apologized, claiming that he believed she was his wife, Maria’s stepmother.¹¹ Later that night, he fondled her breast again and then her vagina.¹² This time he did not

1. See *Chung v. Att’y Gen. of Jam.*, [2019] JMFC Full 3, ¶ 5 (Jam.) (“The virtual complainant is the Claimant’s daughter.”); see generally Jamaica’s Sexual Offences Act stipulates that the complaint in a sexual abuse case should not be identified by name. See Sexual Offences Act, § 28 (2009) (“[A]fter an allegation has been made that a person has been the victim of rape or any other sexual offence under this Act—(a) no report of the proceedings in relation to the offence shall reveal the name or address, or include any particulars calculated to lead to the identification of the complainant either as being the person against or in respect of whom the proceedings are taken or as being a witness therein”) (Jam.).

2. See Olympia Duhart, *Social Distancing as a Privilege: Assessing the Impact of Structural Disparities on the COVID-19 Crisis in the Black Community*, 37 GA. ST. U. L. REV. 1305, 1310 n.2 (2021) (stating that the author employed “a narrative technique in an effort to humanize the disparate outcomes that ‘neutral’ policies can have on people in different communities”) (first citing Terence Flynn, *How Narratives Can Reduce Resistance and Change Attitudes: Insights from Behavioral Science Can Enhance Public Relations Research and Practice*, 2 RSCH. J. INST. FOR PUB. RELS. 1, 11 (2015); then citing Olympia Duhart & Steven I. Friedland, *Advancing Technology and the Changing Conception of Human Rights*, 55 GONZ. J. INT’L L. 331, 344–45 (2020)).

3. *Chung*, [2019] JMFC Full 3, ¶ 5 (Jam.).

4. *Id.*

5. *Id.* ¶ 6.

6. *Id.*

7. *Id.*

8. See *id.* ¶ 5.

9. *Id.* ¶ 6.

10. *Id.*

11. *Id.*

12. *Id.*

apologize.¹³ Maria did not tell anyone that her father had fondled her.¹⁴ She kept silent because she was afraid.¹⁵ For one, Maria feared her grandmother, whom Maria claimed cursed and punched her staff.¹⁶ Maria also feared that her father would make true on his threats to send her back to her mother if she rejected his sexual advances.¹⁷ Maria did not want to go back to live with her mother.¹⁸ Most importantly, Maria yearned for her father's attention, and she feared that her father would not love her if she protested so she acquiesced to his sexual touches.¹⁹ After that night, Maria's father continued to fondle her whenever they were alone.²⁰ He created opportunities for him and Maria to be at home alone.²¹ In fact, he opted out of some family outings claiming that he had to take her to visit her mother but would instead stay home and fondle her.²²

The summer before her fifteenth birthday, he took her virginity by inserting his penis into her vagina.²³ After that, he had regular sexual intercourse with her.²⁴ Maria finished high school and went abroad to study.²⁵ When her father came to visit, they had sex.²⁶ They continued to have sex when she returned to live at her grandmother's house in Jamaica after finishing school.²⁷ Although Maria had her own room, her grandmother complained if Maria locked her room door.²⁸ Even as an adult, Maria still feared her grandmother.²⁹ The open door provided unbridled access that made it easier for Maria's father to come to her room or for her to go to his room for sex.³⁰

Maria got pregnant with her father's child, but she had an abortion.³¹ Maria claimed that her father "was the only man [she] was having

13. *See id.*

14. *Id.* ¶ 7.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *See id.*

20. *Id.* ¶ 8.

21. *Id.*

22. *Id.*

23. *Id.* ¶ 9.

24. *Id.*

25. *Id.* ¶ 10.

26. *Id.*

27. *Id.*

28. *Id.*

29. *See id.* ¶ 58.

30. *Id.* ¶ 10.

31. *Id.* ¶ 12.

sexual intercourse with.”³² When Maria was in her early twenties, she and her co-workers discussed “a newspaper article concerning incest.”³³ Her co-workers were critical of incest.³⁴ Maria knew then that having sex with her father was not right.³⁵ That night, when Maria’s father came to her room for sex, she started to sob and asked him to stop.³⁶ She told him about her co-workers’ criticism of incest.³⁷ That was the last time Maria and her father had sex.³⁸

It took Maria decades to report the sexual abuse to the police.³⁹ Maria said “she felt ashamed about what had happened to her,” and she feared no one would believe her.⁴⁰ She tried to forget the years of abuse and forge on with her life, but memories of the abuse refused to fade.⁴¹ As Maria observed her father interacting with her younger sisters, his two younger daughters, she became concerned and suspicious that he may also sexually abuse them.⁴² She discussed her suspicions with her husband, who encouraged her to report her abuse.⁴³ Maria said she initially refused to report her sexual abuse to the police because her father was “an influential businessman.”⁴⁴ However, she reported her abuse to the police in 2011, when her sisters were seventeen and eleven years old, respectively.⁴⁵ In January 2012, Maria’s father was charged with eleven counts of sexual assault.⁴⁶ The prosecution abandoned four of the charges.⁴⁷ Trial proceeded on four counts of indecent assault and three counts of incest.⁴⁸ In August of that same year, a clinical psychologist

32. *Id.* ¶ 10.

33. *Id.* ¶ 13.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. Maria testified that after she asked her father to stop having sex with her, he started to treat her badly. For example, he evicted her from the apartment where she was living. *Id.*

39. *See id.* ¶ 6, 62 (stating that Claimant started abusing virtual complainant around 1976 and virtual complainant did not report abuse until 2011).

40. *Id.* ¶ 58.

41. *See id.* ¶ 15.

42. *Id.* ¶ 61.

43. *Id.*

44. *Id.* ¶ 15.

45. *Id.* ¶ 16.

46. *See id.* ¶ 3, 54; *see also* Nickoy Wilson, *MoBay Businessman Freed of Incest Charges*, THE GLEANER (Oct. 29, 2019, 12:11 AM), <http://jamaica-gleaner.com/article/lead-stories/20191029/mobay-businessman-freed-incest-charges>. Maria’s father denied all allegations of incest and sexual abuse. Instead, he claimed that Maria’s allegations of incest and sexual assault were her way of retaliating against him for firing her for dishonesty. *See id.* ¶ 17, 54.

47. Wilson, *supra* note 46.

48. *Id.*

diagnosed Maria with Post Traumatic Stress Disorder brought on by childhood sexual abuse.⁴⁹ The case lagged in the court system for several years.⁵⁰ During that time, vital records and other evidence were destroyed, and witnesses became unavailable.⁵¹ In 2019, Maria's father, the defendant, was acquitted of all charges.⁵² The court noted that the prosecution failed to produce evidence to prove sexual assault resulting in an acquittal on those charges.⁵³ Maria's father was also acquitted of the incest charges.⁵⁴ In Jamaica, incest is based on sexual intercourse with statutorily defined blood relatives.⁵⁵ Although Maria believed the defendant was her father and he represented himself as Maria's father, exercised parental control over her, and provided for her as his daughter, DNA evidence later presented at trial proved that he was not her biological father.⁵⁶

If this were an episode of Law and Order Special Victims Unit, you would have shook your head in disbelief; you would have wondered why the law on incest is so outdated that it still strictly follows consanguineal lines in a society that has long abandoned the traditional nuclear family as its normative family structure; you would have been frustrated at the delays and slow court process that in the end paralyzed the hands of justice; you would have been angry at Assistant District Attorney Carisi⁵⁷ for not making the

49. See Chung, [2019] JMSC Full 3, ¶ 18.

50. See *id.* ¶ 32-33.

51. See *id.* ¶ 21 (stating that witnesses and Claimant's ex-wife had remarried and was now living abroad; vital documents, such as the psychologist's notes of Maria's "visits" were destroyed seven years after she was treated in compliance with Florida's practice, and certain buildings including the apartment above the supermarket, were destroyed or remodeled).

52. See Wilson, *supra* note 46.

53. See *id.*

54. See *id.*

55. See *id.* (stating that "DNA test revealed that Claimant was not the biological father of the woman"); Incest in Jamaica is defined as sexual intercourse between closely related blood relatives. See Incest (Punishment) Act, § 2 (1948) ("(1) Any male person who has carnal knowledge of a female person, who is to his knowledge his grand-daughter, daughter, sister, or mother, shall be guilty of a misdemeanour . . .") (Jam.); Sexual Offences Act, § 7 (2009) ("The offence of incest is committed by a male person who willingly has sexual intercourse with another person knowing that the other person is his grandmother, mother, sister, daughter, aunt, niece or granddaughter . . . relationship between the person charged with an offence under any of those subsections and the person against whom the offence is alleged to have been committed includes a relationship determined by reference to the whole blood or half blood . . .") (Jam.).

56. See Wilson, *supra* note 46; Chung, [2019] JMSC Full 3, ¶ 5 (referring to Maria as the Claimant's daughter).

57. Dominick Carisi is the Assistant District Attorney on the long-running TV Series Law & Order: Special Victims Unit (SVU). See Anne Easton, *Law & Order: SVU's' Peter Scanavino Details His Transition Out of The Squad Room And Into The Courtroom as the Series New Assistant District Attorney*, FORBES (Oct. 3, 2019, 1:29 PM), <https://www.forbes.com/sites/anneeaston/2019/10/03/law--order-svus-peter-scanavino-details-his->

court see that while the defendant was not Maria's biological father, he raised her, exercised power and control over her, and provided for her. Therefore, he is her father in every way that counted, and the incest charges should stand; you would have been furious by the seemingly lack of priority given to this child sexual abuse case and prayed that this was an unfortunate anomaly. You would have been even more furious because consciously or subconsciously, the incest taboos would have triggered your amygdala into action sending you into flight, fight, or freeze mode. In the end, you would have walked away from your television set or streaming device still seething, but comforted that what you just saw was fiction.

Sadly, Maria's situation is not fiction, nor is it unique. As Maria's situation revealed, Jamaica's incest law is narrowly defined to include only heterosexual sexual intercourse with a close blood relative.⁵⁸ Put another way, incest as defined by the Jamaican legislature, past⁵⁹ and present,⁶⁰ narrowly proscribes sexual intercourse between close consanguineous relationships, therefore perpetrators who sexually abused someone living in the same household who they believe to be their child or for whom they assume or have assumed a parental role cannot be charged with incest. What is more, a parent or blood-relative who sexually abuses a child of the same sex cannot be charged with incest, whereas it would have been incest if the parent or blood-relative were of the opposite sex.⁶¹ To explain, if a man sexually abuses his eleven-year-old son, he cannot be charged with incest even where DNA confirms that he is the child's biological father because same-sex intrafamilial sexual abuse, albeit with a close blood relative, does not qualify as incest under Jamaica's incest law.⁶² That man, however, could be charged with incest if he had sexually abused his eleven-year-old

transition-out-of-the-squad-room-and-into-the-courtroom-as-the-series-new-assistant-district-attorney/?sh=d7fe7395c6b2.

58. See Incest (Punishment) Act, §§ 2-4; Sexual Offences Act, § 7 ("The offence of incest is committed by a male person who willingly has sexual intercourse with another person knowing that the other person is his grandmother, mother, sister, daughter, aunt, niece or granddaughter . . . relationship between the person charged with an offence under any of those subsections and the person against whom the offence is alleged to have been committed includes a relationship determined by reference to the whole blood or half blood . . .").

59. See Incest (Punishment) Act, §§ 2-4.

60. See Sexual Offences Act, § 7.

61. See *id.* ("The offence of is committed by a male person . . . with another person knowing that the other person is his grandmother, mother, sister, daughter, aunt, niece or granddaughter. The offence of incest is committed by a female person . . . with another person knowing that the other person is her grandfather, brother, son, uncle, nephew or grandson.").

62. See *id.*

daughter.⁶³ This Article argues that incest, as defined under Jamaica's Sexual Offences Act, is too narrow and does not serve three of the critical purposes of incest laws, to (1) protect vulnerable children from intrafamilial sexual abuse at the hands of non-blood "relatives" residing in the same household including their parent's or guardian's transient partners especially if they act as a parent to the child;⁶⁴ (2) protect the integrity of the family;⁶⁵ and (3) serve as a deterrent to the persons who live or frequent the home and who act in *loco parentis* to the child.⁶⁶

Part I looks at child sexual abuse as a global, Caribbean, and Jamaican problem. As global statistics indicate and scholarship confirm, children are most likely to be sexually abused within the home and at the hands of relatives.⁶⁷ This Part looks at intrafamilial child sexual abuse, also known as incest in many jurisdictions, the incest taboo, and the expansion of the definition of incest in contemporary society based on the diversifying of the modern family structure.

Part II shows that child sexual abuse at the hands of family members related by blood, persons living in the same household, and transient parental or guardian partners is a significant problem in Jamaica. This Part suggests that Jamaica's family structure and cultural beliefs must be considered in evaluating the state of intrafamilial child sexual abuse. To illustrate, the contemporary predominant Jamaican family structure is a single female-

63. See *id.* at §§ 2,7. Sexual intercourse as included in the incest provision means penile penetration of the vagina. See *id.* at § 4. The incest provision of the Sexual Offences Act only proscribes sexual intercourse. See generally *id.*

64. See Note, *Inbred Obscurity: Improving Incest Laws in the Shadow of the "Sexual Family"*, 119 HARV. L. REV. 2464, 2482 (2006).

65. See George P. Smith, II, *Incest and Intrafamilial Child Abuse: Fatal Attractions or Forced and Dangerous Liaisons?* 29 J. FAM. L. 833, 836 (1990-1991).

66. See Phyllis Coleman, *Incest: A Proper Definition Reveals the Need for a Different Legal Response*, 49 MO. L. REV. 251, 269 (1984) ("Criminal incest laws are designed to punish incestuous behavior and deter any such conduct in the future."); Jonathan Todres, *Confronting Child Trafficking*, 18 IND. HEALTH L. REV. 95, 99 (2021) (listing deterrence and punishing the perpetrator as criminal law's core goal).

67. See UNICEF, ACTION TO END CHILD SEXUAL ABUSE AND EXPLOITATION: A REVIEW OF THE EVIDENCE 11 (2020) (citing KNOW VIOLENCE IN CHILDHOOD: A GLOBAL LEARNING INITIATIVE, GLOBAL REPORT ENDING VIOLENCE IN CHILDHOOD 46-47 (2017)); see also Delores E. Smith et al., *A Discussion on Sexual Violence Against Girls and Women in Jamaica*, 26 J. SEXUAL AGGRESSION 5, (2019) (citing UNICEF JAMAICA, SITUATION ANALYSIS OF JAMAICAN CHILDREN 26 (2018)); Cynthia Grant Bowman & Elizabeth Brundige, *Child Sex Abuse Within the Family in Sub-Saharan Africa: Challenges and Change in Current Legal and Mental Health Responses*, 47 CORNELL INT'L L.J. 233, 248 (2014) ("[I]ncest and other forms of sexual violence are related to the 'disempowerment and emasculation' of African men that results from unemployment and also from a heritage of colonialism and apartheid." (citing Carol Bower, *The Relationship Between Child Abuse and Poverty*, 56 AGENDA 84, 85 (2003))).

parent-headed household.⁶⁸ Children are at an increased risk of sexual abuse by persons living within their household because Jamaica's family structure has evolved over the years from a largely nuclear family structure to a predominantly single female-parent-headed household which allows for more transient partners, thus increasing the child's exposure to multiple partners who are brought into the home by a parent or guardian and treated as "an integral member of the family."⁶⁹ The risk to the child remains high even where the parent's or guardian's partner does not live in the household but has access to the child. This increased exposure is problematic given documented evidence that "in some Jamaican households, male breadwinners believe they are entitled to sexual relations with all females in the house," including female children ages sixteen and under.⁷⁰ Studies show that child sexual abuse by transient parental partners, including those who do not reside in the same household, can be "functionally similar to incest in the nuclear family."⁷¹ This Part then looks at the harm intrafamilial child sexual abuse causes to the child, family, and society and argues that available statistics fail to capture the magnitude of the problem because child sexual abuse at the hands of family members, persons living in the same household, and transient parental or guardian partners is typically silenced and consequently underreported.⁷²

68. See Theophilinie Bose-Duker et al., *Children's Resource Shares: Male Versus Female-Headed Households*, 42 J. FAM. & ECON. ISSUES 573, 574 (2020) (noting that "45.6% of all households in Jamaica are female-headed" (first citing Joycelin Massiah, *Female-Headed Households and Employment in the Caribbean*, 2 WOMEN'S STUD. INT'L 7, 7 (1982); and then citing Sudhanshu Handa, *The Determinants of Female Headship in Jamaica: Results from a Structural Model*, ECON. DEV. & CULTURAL CHANGE 793, 795 (1996))); see also GOV'T OF JAM., NATIONAL PLAN OF ACTION FOR AN INTEGRATED RESPONSE TO CHILDREN AND VIOLENCE (NPACV) 2018–2023 25 (2018).

69. See Eloise Dunlap et al., *Transient Male-Female Relationships and the Violence They Bring to Girls in the Inner City*, 7 J. AFR. AM. STUD. 19, 20 (2003) (citing M. BELINDA TUCKER & CLAUDIA MITCHELL-KERNAN, *THE DECLINE IN MARRIAGE AMONG AFRICAN AMERICANS* (Russell Sage Found. ed., 1995)).

70. Valeta Wilson-James, *The Influences of Cultural Norms on Child Sexual Abuse Prevention of Female Adolescents in Jamaica* 15, 146–47 (2021) (Ph.D. dissertation, Walden University) (on file with Walden Dissertations and Doctoral Studies Collection); see also Ena Trotman Jemmott & Priya E. Maharaj, *Gendered Sexual Relations and Sexualized Gender Relations*, in UNDERSTANDING CHILD SEXUAL ABUSE: PERSPECTIVES FROM THE CARIBBEAN, 46 (Adele D. Jones ed. 2013) (detailing a study on the normalization of sex between secondary school girls and men, the authors noted that young girls were "having to engage in sexual activities with males in the household, that is mothers' boyfriends, who are the main breadwinner; and with other men outside of the home for economic and other material gain").

71. See DAVID FINKELHOR, *SEXUALLY VICTIMIZED CHILDREN* 94 (The Free Press, a Div. of Macmillan Publ'g Co., Inc. & Collier Macmillan Publishers eds., 1981).

72. See Wilson-James, *supra* note 70, at 22 ("[V]ictims are unable to report the sexual abuse because of their perpetrator's position in the family.").

Part III looks at Jamaica's incest laws, past and present, and focuses on the current incest provisions of the Sexual Offences Act. This Part also looks at the limitations of the incest provision and argues that current incest protections fall short of international standards. In doing so, this section looks at protections against intrafamilial child sexual abuse under international law.

Part IV suggests that Jamaica's incest laws could be better to protect children who are vulnerable to intrafamilial child sexual abuse. This Part looks at what scholars have said and what approaches other countries have taken to improve their incest regulations.

Part V argues for a new framework moving forward. This Part argues that effective laws typically change to meet societal needs and address societal changes.⁷³ Consequently, this Part argues that the time is ripe for Jamaica to change its incest law, based solely on consanguineous relationships, to acknowledge Jamaica's long departure from the traditional nuclear family to the existing transient family structure. On that point, this Article asks the legislature to look to other progressive jurisdictions, including England, that have sought to protect their children and the integrity of a changing family structure by adding affinity and cohabitating relationships to their incest laws. This Part posits that, at a minimum, Jamaica should add affinity and cohabiting relationships such as stepparents, guardians, custodial parents, common-law parents, de facto custodians, and adoptive parents to the current incest laws. This change is necessary also because Jamaica has a high rate of misattributed paternity, which allows men to escape an incest charge even where they believed the child victim to be their biological child, and represented themselves as the child's biological father, but DNA evidence at trial proves otherwise. This was the situation in Maria's case.⁷⁴ If the incest laws had included de facto custodian, custodial parent, or guardian, Maria would have had a fighting chance to have the incest charges stand in court.

Now, as with most criminal laws, the main goal of incest laws is deterrence.⁷⁵ However, as Professor Jonathan Todres mentioned of human

73. See William A. Bogart, *Introduction: Defining an Identity*, 27 WINDSOR REV. LEGAL & SOC. ISSUES 1, 1 (2009) (commenting on a range of legal reforms such as "how law should change to meet societal needs and how a changing society should alter legal institutions").

74. See *Chung v. Att'y Gen. of Jam.*, [2019] JMFC Full 3, ¶ 139 (Jam.) ("[Claimant] denied being the virtual complainant's father . . .").

75. See Todres, *supra* note 66, at 99. See also *Father Jailed for Having Sex with Daughter in Barbados*, JAM. OBSERVER (July 21, 2023), <https://www.jamaicaobserver.com/2023/07/21/father-jailed-for-having-sex-with-daughter-in-barbados> (statement of Judge Randall Worrell of the High Court in Barbados) (containing Justices' statement that "[i]ncest is considered a detestable offense which desecrates the sanctity of the home and must attract a custodial sentence as a general deterrent to others").

trafficking, we cannot prosecute our way out of an incest crisis, and we cannot rely on prosecution to be an “exclusive means of solving the problem.”⁷⁶ This is particularly true given the longstanding problems of delays in the overburdened judicial system and the prevailing culture of patriarchy that minimizes, ignores, and generally dismisses violence against women and children.⁷⁷ Consequently, this Article concludes by positing that acknowledging that the current family structure incorporates people related by blood, affinity, and cohabitation, and calling sexual abuse at their hands incest is likely to invoke the incest taboo which may also serve as a deterrent.

II. CHILD SEXUAL ABUSE AND INTRAFAMILIAL CHILD SEXUAL ABUSE (INCEST)

A. *Child Sexual Abuse Global and Caribbean Problem*

Child sexual abuse (CSA) is a significant and *growing* global problem that harms millions of children annually.⁷⁸ Girls and boys of all ages,

76. See Todres, *supra* note 66, at 99.

77. See also RAMONA BIHOLAR, TRANSFORMING DISCRIMINATORY SEX ROLES AND GENDER STEREOTYPING: THE IMPLEMENTATION OF ARTICLE 5(A) CEDAW FOR THE REALIZATION OF WOMEN’S RIGHT TO BE FREE FROM GENDER-BASED VIOLENCE IN JAMAICA 141 (2013) (“The [interviewee] made clear that [women-deserve-beatings]-type of thinking cuts across and transcends economic groups and class structures, supporting the manifestation of gender-based violence against women as a generally accepted dynamic of male/female relations, to the extent of justifying violent behaviour.”); see generally Camille Gibson et al., *Sexual Abuse of Minors in Jamaica: Understanding Predator, Prey, and Citizenry*, 5 J. ETHNICITY CRIM. JUST. 109, 116 (2007) (“Enforcement of the existing laws remains problematic partly because those in the legal system have their own biases which often include antiquated tendencies to blame victims for their own victimization.”).

78. See Rana Flowers, *Child Sexual Abuse: Time for Action*, UNICEF CHINA: STORIES (Feb. 27, 2018), <https://www.unicef.cn/en/stories/child-sexual-abuse> (stating that child sexual abuse is a global problem); see also Susan Alexa Pusch et al., *The Environment of Intrafamilial Offenders – A Systematic Review of Dynamics in Incestuous Families*, 16 SEXUAL OFFENDING: THEORY, RSCH, PREVENTION 1, 2 (2021) (“Child sexual abuse is a widespread phenomenon with lasting social and health consequences.”); Jude Mary Cénat et al., *Lifetime and Child Sexual Violence, Risk Factors and Mental Health Correlates Among a Nationally Representative Sample of Adolescents and Young Adults in Haiti: A Public Health Emergency*, 38 J. INTERPERSONAL VIOLENCE 2778, 2779 (2023) (“Sexual violence is a global human rights and public health concern . . .”) (first citing Brett Bowman et al., *The Impact of Violence on Development in Low- to Middle-Income Countries*, 15 INT’L J. INJ. CONTROL AND SAFETY 209 (2008); then citing Harold Dubowitz, *Child Sexual Abuse and Exploitation—A Global Glimpse*, CHILD ABUSE AND NEGLECT, Feb. 23, 2017; then citing David Finkelhor, *The International Epidemiology of Child Sexual Abuse*, 18 CHILD ABUSE AND NEGLECT 409 (1994) [hereinafter Finkelhor, *Child Sexual Abuse*]; then citing WHO, WORLD REPORT ON VIOLENCE AND HEALTH (Etienne G. Krug et al. eds., 2002); then citing Marije Stoltenborgh et al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16 CHILD MALTREATMENT 79 (2011); and then citing CLAUDIA GARCIA-MORENO ET AL., GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN:

including infants, are at risk for child sexual abuse.⁷⁹ Global data shows, however, that girls, in particular adolescent girls, are more likely to be victims of child sexual abuse.⁸⁰ In underscoring the prevalence of the problem, “child sexual abuse occurs in all countries and across all racial, ethnic, religious and socio-economic groups.”⁸¹ Horrifying but true, men and women of all ages, social class, educational background, and professional status sexually abuse children.⁸² However, reported data indicates that child sexual abusers are most often adult heterosexual and homosexual men.⁸³

Existing data fails to capture the true extent of the global child sexual abuse problem in large part because child sexual abuse often occurs in silence, is shrouded in secrecy,⁸⁴ and often remains unreported or underreported.⁸⁵ Another factor that aids in masking the true extent of the problem is the lack of global and sometimes national consensus on what

PREVALENCE AND HEALTH EFFECTS OF INTIMATE PARTNER VIOLENCE AND NON-PARTNER SEXUAL VIOLENCE (WHO et al. eds., 2013)); ADELE D. JONES & ENA TROTMAN JEMMOTT, CHILD SEXUAL ABUSE IN THE EASTERN CARIBBEAN: THE REPORT OF A STUDY CARRIED OUT ACROSS THE EASTERN CARIBBEAN DURING THE PERIOD OCTOBER 2008 TO JUNE 2009 55-56 (2009) [hereinafter JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY] (“Sexual activity between an adult and a child or between a young person and a younger child involves a violation of the rights and personhood of the child, often with severe and long-lasting psychosocial consequences, and that the coercion and betrayal of trust involved in most acts of child sexual abuse is deeply destructive to both child and family.”).

79. JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 55 (noting that child sexual abuse “is far more common than previously thought and affects children of all ages, including infants”).

80. *See id.* at 224 (“Both boys and girls are sexually abused although girls are more at risk.”); Pusch et al., *supra* note 78, at 2; *cf.* David Finkelhor, *Current Information on the Scope and Nature of Child Sexual Abuse*, 4 FUTURE CHILD. 31, 48 (1994) [hereinafter Finkelhor, *Nature of Child Sexual Abuse*] (“[B]oys are much more frequently abused than the ratio of reported cases would suggest.”).

81. JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 55.

82. *See id.* at 238; ADELE D. JONES & ENA TROTMAN JEMMOTT, CHILD SEXUAL ABUSE IN THE EASTERN CARIBBEAN: ISSUES FOR BARBADOS 11 (2009) [hereinafter JONES & JEMMOTT, ISSUES FOR BARBADOS] (detailing findings of a study that confirmed other studies indicating that “most child sexual abuse is committed by adult men (both heterosexual and homosexual) of all ages and across all levels of social class, educational background and professional status”); Sheron C. Burns, *The Ontology and Social Construction of Childhood in the Caribbean*, in UNDERSTANDING CHILD SEXUAL ABUSE: PERSPECTIVES FROM THE CARIBBEAN, *supra* note 70, at 34 (acknowledging that “[a]n abuser may be a man or woman”).

83. JONES & JEMMOTT, ISSUES FOR BARBADOS, *supra* note 82, at 11.

84. *See id.* at 125.

85. UNICEF OFF. FOR BARB. AND E. CARIBBEAN, CHILD SEXUAL ABUSE IN THE EASTERN CARIBBEAN: PERCEPTIONS OF, ATTITUDES TO, AND OPINIONS ON CHILD SEXUAL ABUSE IN THE EASTERN CARIBBEAN 10 (2010) [hereinafter CHILD SEXUAL ABUSE EASTERN CARIBBEAN: PERCEPTIONS]; *id.* at 125-26 (noting that intrafamilial child sexual abuse is most likely to go under or unreported); JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 148.

constitutes child sexual abuse.⁸⁶ Although studies show that child sexual abuse is a significant and growing global problem, the definition of what constitutes child sexual abuse varies across countries and jurisdictions.⁸⁷ Countries sometimes look to the World Health Organization's (WHO) definition of CSA for guidance. The United Nations Convention on the Rights of the Child, to which Jamaica is a signatory,⁸⁸ and the World Health Organization define a child as a person under 18 years of age.⁸⁹ The WHO defines child sexual abuse as "the involvement of a child in sexual activity that [they] do[] not fully comprehend, are unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws of social taboos of society."⁹⁰ To explain, "[c]hild sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust of power, the activity being intended to gratify the needs of the other person."⁹¹ Put more concretely, CSA may include any inappropriate contact or non-contact sexual interaction or behavior between an adult and a child.⁹² For example, contact with the child victim, such as fondling, asking the child to touch their or an adult's genitalia; intimate kissing; and oral, anal, or vaginal intercourse typically qualifies as child sexual abuse.⁹³ CSA may also include "non-contact activities," such as involving the child in watching sexual activities, encouraging the child to behave in sexually explicit ways, and exposing the child to inappropriate

86. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 77; Jeffrey J. Haugaard, *The Challenge of Defining Child Sexual Abuse*, 55 AM. PSYCH. 1036, 1036 (2000) (noting that there is no commonly accepted definition of child sexual abuse and this lack inhibits "research, treatment, and advocacy efforts").

87. See Haugaard, *supra* note 86, at 1036.

88. Convention on the Rights of the Child art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3 (signed and ratified by Jamaica on May 14, 1991).

89. *Id.* art.1; World Health Org., Guidelines for Medico-Legal Care for Victims of Sexual Violence, 5 (2003).

90. World Health Org., *supra* note 89, at 75.

91. *Id.*

92. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 55; Adele D. Jones & Ena Trotman Jemmott, *A Culturally Contexted Study of Perceptions, Attitudes and Opinions on Child Sexual Abuse*, in UNDERSTANDING CHILD SEXUAL ABUSE: PERSPECTIVES FROM THE CARIBBEAN, *supra* note 70, at 180 [hereinafter Jones & Jemmott, *Opinions on Child Sexual Abuse*].

93. See CHRISTINE FRAY ET AL., POLICY BRIEF: CHILD SEXUAL ABUSE IN JAMAICA 4 (2020), https://research.tees.ac.uk/ws/portalfiles/portal/47290326/Jamaica_Policy_Brief_Screen_View.pdf ("CSA involved physically touching the child's sexual regions or forcing the child to touch the perpetrator's sexual regions. . .").

sexual materials such as videos and pictures.⁹⁴ Forcing or encouraging a child to become involved in prostitution or pornography also qualifies as child sexual abuse.⁹⁵

CSA is a significant and growing problem in Jamaica and other Caribbean nations.⁹⁶ A landmark study, the first to examine attitudes toward child sexual abuse in Eastern Caribbean countries, confirmed that CSA is an escalating and widespread problem in the Caribbean.⁹⁷ The study, commissioned by UNICEF and the Governments of the Eastern Caribbean, confirmed that sexual abuse of children is in large part facilitated by increased access to the child and is often “carried out by someone well known to the child, including relatives and family friends.”⁹⁸ To this end, the study unsurprisingly revealed that the main perpetrators of child sexual abuse are the partners of the children’s mother or guardian, typically the husbands or boyfriends.⁹⁹

It remains true that an overwhelming number of victims of child sexual abuse are girls, but the study also confirmed that boys in the Caribbean are sexually abused by men and women.¹⁰⁰ The study indicated that inherent gender inequality typically caused sexually abused boys to be neglected despite the fact that they suffer “the same harmful effects as their female counterparts.”¹⁰¹ Equally poignant, the social stigmatization of

94. See JONES & JEMMOTT, ISSUES FOR BARBADOS, *supra* note 82, at 9; Jennifer A. Piazza & Paula K. Lunderberg-Love, *Adult Survivors of Incest: Psychological Sequelae and Treatment*, in VICTIMS OF SEXUAL ASSAULT AND ABUSE: RESOURCES AND RESPONSES FOR INDIVIDUALS AND FAMILIES 157, 158 (Michele A. Paludi & Florence L. Denmark eds., 2010).

95. See JONES & JEMMOTT, ISSUES FOR BARBADOS, *supra* note 82, at 9; Jones & Jemmott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 180.

96. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 9; see generally Paul Miller, *Children at Risk: A Review of Sexual Abuse in Incidents and Child Protection Issues in Jamaica*, 1 OPEN REV. EDUC. RSCH. (2014).

97. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 7, 9 (noting that the countries selected: Anguilla, Barbados, Dominica, Grenada, Montserrat, St. Kitts and Nevis, are “collectively considered representative of the region”).

98. Burns, *supra* note 82, at 34 (citing NATIONAL SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN, PROTECTING CHILDREN FROM SEXUAL ABUSE: A GUIDE FOR PARENTS AND CARERS, <https://learning.nspcc.org.uk/child-abuse-and-neglect/child-sexual-abuse> (Oct. 31, 2024)).

99. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 12 (noting that international studies “show that stepfather abuse is significantly higher than abuse by biological fathers” and finding that the presence of several stepfathers may increase risk for intrafamilial child sexual abuse); *id.* at 186 (noting that “[i]n every single interview, [incest] was cited as the most prevalent issue, with step-fathers being regarded as the main perpetrators.”).

100. See *id.* at 10.

101. See *id.* at 140.

homosexuality typically guarantees that homosexual abuse of boys and girls is kept secret, causing the victims to suffer in silence.¹⁰²

The study documented a passive acceptance of child sexual abuse among the respondents.¹⁰³ Some respondents in the study expressed alarm at the magnitude of the CSA problem, while other respondents made comments that suggested “almost an acceptance of child sexual abuse as normal and inevitable.”¹⁰⁴ The expressed normalization of child sexual abuse explains why persons are willing to look the other way and turn a blind eye to the sexual abuse.¹⁰⁵ Overall, the study cautioned that CSA has “increasingly severe consequences for Caribbean societies”¹⁰⁶ because of “adults who carry out harmful sexual practices with children [and because of] non-abusing adults through complicity, silence, denial and failure to take appropriate action.”¹⁰⁷

Jamaica has one of the highest CSA rates in the Caribbean.¹⁰⁸ In 2019, UNICEF reported that “[s]exual violence is one of the most unsettling violations of children’s rights, and one of the most rampant forms of violence against children in Jamaica.”¹⁰⁹ High incidences of child sexual abuse across

102. *See id.* at 162.

103. *See id.* at 21.

104. *Id.*

105. *See id.* at 9.

106. *Id.*

107. *Id.*

108. Wilson-James, *supra* note 70, at 6 (“Of all the Caribbean nations, Jamaica reportedly has one of the highest CSA rates. . . .”) (first citing CARIBBEAN POL’Y RSCH. INST., SITUATION ANALYSIS OF JAMAICAN CHILDREN 19–20 (2018), www.unicef.org/jamaica/sites/unicef.org.jamaica/files/2019-10/UNICEF_20180618_SituationAnalysis_web.pdf; and then citing Julie Meeks Gardner et al., *Violence Against Children in the Caribbean in PROMOTING CHILD RIGHTS THROUGH RESEARCH: PROCEEDINGS OF THE CARIBBEAN CHILD RESEARCH CONFERENCE 2006* 3 (Aldrie Henry-Lee & Julie Meeks-Gardner eds., 2008), https://www.researchgate.net/publication/300078841_Violence_against_Children_in_the_Caribbean_A_Desk_Review); TATYANA KARPENKO-SECCOMBE ET AL., REPRESENTATIONS OF CHILD SEXUAL ABUSE IN JAMAICA: A CORPUS-ASSISTED DISCOURSE STUDY OF POPULAR NEWS MEDIA 4 (MDPI ed., 2022) (“Child sexual abuse has been a public health concern in Jamaica for several decades.” (citing HENRY KEMPE, *The 1977 C. Anderson Aldrich Lecture in C. HENRY KEMPE: A 50 YEAR LEGACY TO THE FIELD OF CHILD ABUSE AND NEGLECT* 179 (Richard D. Krugman & Jill E. Korbin eds., 1978)); *see also* CARIBBEAN POLICY RESEARCH INSTITUTE (CAPRI), STRESS TEST: THE IMPACT OF THE PANDEMIC ON DOMESTIC AND COMMUNITY VIOLENCE 32 (2021), <https://www.capricaribbean.org/sites/default/files/documents/stresstesttheimpactofthepandemicondomesticandcommunityviolence.pdf> (“A 2013 survey by the Office of the Children’s Registry (now the National Children’s Registry), found that 90 percent of known cases of child sexual abuse remain unreported by adults who were aware of the abuse taking place.” (citation omitted)).

109. UNICEF, CHILDHOOD IN JAMAICA: STAINED BY VIOLENCE 8 (2019) [hereinafter UNICEF, STAINED BY VIOLENCE].

the island's fourteen parishes¹¹⁰ cement its place as a national crisis.¹¹¹ Further research also documented that child sexual abuse is one of the fastest growing crimes adversely affecting Jamaican communities, and the second most common cause of injury among females."¹¹² This finding may come as no surprise to national and international observers as Jamaica continues to experience one of the highest rates of sexual abuse against females, averaging more than three times the global average."¹¹³ Consistent with the global trend, boys and girls are victims of sexual abuse¹¹⁴ but reported data shows that girls are at a heightened risk.¹¹⁵ Available data and media reports offered as proof of the state of child sexual violence in Jamaica suggest that female adolescents are particularly targeted.¹¹⁶ In fact, "Jamaican female adolescents are eight times more likely to be sexually abused than any other group."¹¹⁷ Of this group, early and middle adolescents are particularly vulnerable.¹¹⁸

110. See Wilson-James, *supra* note 70, at 6 ("CSA is a nationwide problem affecting female adolescents from all 14 parishes." (first citing Paul Miller, *Children at Risk: a Review of Sexual Abuse Incidents and Child Protection Issues in Jamaica*, 1 OPEN REV. EDUC. RSCH. 171, 177 (2014); and then citing U.S. Dept. of State, *Child Protection Compact Partnerships–Jamaica*, U.S. DEPT. OF STATE: CHILD PROTECTION COMPACT PARTNERSHIPS, <https://www.state.gov/child-protection-compact-partnerships-jamaica/> (last visited Oct. 19, 2024))).

111. See Kimika M. Samms & Blaire E. Cholewa, *Exploring the Context of Child Sexual Abuse in Jamaica: Addressing the Deficits*, 23 J. CHILD SEXUAL ABUSE 115, 116 (2014) ("[S]tatistics available on child abuse in Jamaica reveal that sexual abuse is the third most prevalent reason for children seeking medical attention." (citation omitted)); Wilson-James, *supra* note 70, at 139.

112. See Wilson-James, *supra* note 70, at 27 (citing Smith et al., *supra* note 67, at 3); Kimberley Hibbert, *Those Incest 'Hot Spot' Parishes*, JAM. OBSERVER (June 28, 2020) [hereinafter Hibbert, *Incest 'Hot Spot'*] ("[T]he data from the Jamaica Injury Surveillance System, which shows that over the 2014 to 2017 period, 20 per cent of all child visits to public hospitals were due to sexual assault. The [National Plan of Action for an Integrated Response to Children and Violence 2018-2023] added that females are overrepresented as victims of sexual assaults as 40 per cent of all female child visits were because of a sexual assault.").

113. See Wilson-James, *supra* note 70, at 27 (citing Smith et al., *supra* note 67).

114. See AMNESTY INT'L, JAMAICA: SEXUAL VIOLENCE AGAINST WOMEN AND GIRLS IN JAMAICA: "JUST A LITTLE SEX" 3 (2006).

115. See UNICEF, STAINED BY VIOLENCE, *supra* note 109, at 8 ("[G]irls are generally at heightened risk.").

116. See GOV'T OF JAM., NATIONAL PLAN OF ACTION FOR AN INTEGRATED RESPONSE TO CHILDREN AND VIOLENCE (NPACV) 2018-2023 6 (2018) [hereinafter NATIONAL PLAN OF ACTION] (noting that girls are "over-represented as victims of sexual assault"); Wilson-James, *supra* note 70, at 9 (citing Murat Yuce et al., *The Psychiatric Consequences of Child and Adolescent Sexual Abuse*, 52 NORO PSIKIYATR ARS. 393, 393–94 (2015)).

117. See Wilson-James, *supra* note 70, at 8 (first citing David AN et al., *Child Sexual Abuse: A Hidden Epidemic*, 7 NIGERIAN J. CLINICAL & BIOMEDICAL RSCH. 6 (2016); then citing Miller, *supra* note 110, and then citing Samms & Cholewa, *supra* note 111).

118. See Carlene Davis, *Despite Taboo, Incest Alive in Jamaica*, THE GLEANER (Nov. 3, 2019, 12:00 AM), <http://jamaica-gleaner.com/article/lead-stories/20191103/despite-taboo-incest-alive-jamaica> [hereinafter *Incest Alive in Jamaica*].

Jamaica-based researcher and clinical social worker Dr. Claudette Crawford-Brown noted that “young girls at 10 -14 age are very, very high risk.”¹¹⁹

Commenters have attributed the prevalence of child sexual abuse in Jamaica in part to an existing rape culture, normalized pedophilia,¹²⁰ and archaic patriarchal beliefs among men and women alike that male breadwinners are entitled to have sexual relations with all females in the household.¹²¹ To illustrate the problem of normalized pedophilia, men of all ages and on all sides of the economic and social strata are having sexual relationships with adolescent girls, and the behavior is “normalized.”¹²² What is more, culturally entrenched beliefs that reaching puberty signifies the end of childhood are often used to sanction this behavior.¹²³ As a result, albeit still considered children under the law, early and middle adolescent girls are considered legitimate sexual targets by some men, including men who maintain a parent-child relationship with the child.¹²⁴

Patriarchal beliefs that men are entitled to sexual relations with females within their household is another entrenched cultural norm that increases the risks of child sexual abuse in Jamaica, particularly among female adolescents.¹²⁵ Researcher Dr. Valeta Wilson-James argues that “[i]n Jamaica, violence against females is deep[ly]-rooted in patriarchal beliefs of male dominance and female subordination.”¹²⁶ These patriarchal beliefs

119. *Id.*

120. See Yasmine Peru, *Nadine Sutherland Blasts ‘Rape Culture’; Praises Young Creatives*, THE GLEANER (Oct. 9, 2021, 12:09 AM), <https://jamaica-gleaner.com/article/entertainment/20211009/nadine-sutherland-blasts-rape-culture-praises-young-creatives>.

121. See Wilson-James, *supra* note 70, at 147; see also Lucy M. Candib, *Incest and Other Harms to Daughters Across Cultures: Maternal Complicity and Patriarchal Power*, 22 WOMEN’S STUD. INT’L F. 185, 197 (1999) (“[P]atriarchal domination characterizes the incest family and perpetuates sexual abuse across the generations.”).

122. See Peru, *supra* note 120 (“Men – both uptown and downtown – were having relationships with 13-year-old girls, and it was normalized.”); see also CAPRI, *supra* note 108, at 2 (“The widespread acceptance and approval of girls 12-and-up engaging in sexual relationships where it appears the girl has ‘given her consent,’ is problematic . . .”).

123. See CAPRI, *supra* note 108, at 37 (stating that young girls from 12 years old can become a source of income for their family through transactional sex); Jones and Jemcott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 179-80 (“[T]here were a significant number of people who believe that childhood ends once a child begins puberty. This partially explains why children were considered by some men to be legitimate sexual targets once they were thought to have made the biological transition to adolescence.”).

124. See CAPRI, *supra* note 108, at 36-37.

125. See Samms & Cholewa, *supra* note 111, at 116; Wilson-James, *supra* note 70, at 20 (citing *id.*).

126. See Wilson-James, *supra* note 70, at 26 (first citing Dolores E. Smith, *Prevalence of Intimate Partner Violence in Jamaica: Implications for Prevention and Intervention*, 7 INT’L J. CHILD, YOUTH & FAM. STUD. 343, 353 (2016); then citing Tania Lucia Gaona et al., *Crime and*

encourage male sexual entitlement and trivialize inappropriate male behavior towards females in Jamaica.¹²⁷ Dr. Wilson-James further argues that these patriarchal beliefs flow from longstanding cultural norms “that there is a hierarchical power structure” and that males are inherently superior to females.¹²⁸ Dr. Wilson-James surmises that these cultural norms are problematic and should be addressed because “culture establishes normative behavior,” which, in turn, normalizes harmful behaviors, such as widespread violence against women and children, and causes these harmful behaviors to become ingrained as a part of the fabric of society.¹²⁹ As an example, patriarchal beliefs and normalized pedophilia contribute to causing adult males and females in Jamaica to “willfully disregard” Jamaica’s Sexual Offences Act, legislation that makes sexual relations between an adult and a person under sixteen years old illegal.¹³⁰

The three most prevalent forms of CSA in Jamaica are intrafamilial abuse, non-family abuse, and transactional sexual abuse.¹³¹ Intrafamilial child sexual abuse most often occurs within the privacy of the home and typically at the hands of family members, including fathers, stepfathers, mother’s boyfriends, grandfathers, uncles, and older brothers.¹³² Intrafamilial sexual abuse is arguably the worst and most destructive form of child sexual abuse because of the perpetrator’s position of trust and power over the child,¹³³ yet the least likely to be reported for several reasons,

Violence in the Caribbean 4 (2015), https://www.academia.edu/13807308/CRIME_AND_VIOLENCE_IN_THE_CARIBBEAN; then citing E. Yoon et al., *Interrelations of Patriarchal Beliefs, Gender, Collectivism/Individualism, and Mental Health*, 33 COUNSELING PSYCH. Q. 199 (2020); and then citing Smith et al., *supra* note 67, at 7); see generally Nesha Z. Haniff, *Male Violence Against Men and Women in the Caribbean: The Case of Jamaica*, 29 J. COMPAR. FAM. STUD. 361, 361-62 (1998) (sharing Tula’s story, she is a woman in Kingston Jamaica who was raped and victimized by a man whose advances she rejected and was never prosecuted so she constantly lives in fear.).

127. See Wilson-James, *supra* note 70, at 26.

128. See *id.* (citing Preeti S. Rawat, *Patriarchal Beliefs, Women’s Empowerment, and General Well-Being* 39 VIKALPA 43, 44, <https://doi.org/10.1177/0256090920140206>; then citing Eunju Yoon et al., *Interrelations of Patriarchal Beliefs, Gender, Collectivism/Individualism, and Mental Health*, COUNSELLING PSYCH. Q. 1, 1 (2018), <https://doi.org/10.1080/09515070.2018.1511520>).

129. See *id.* at 20 (quoting Lorna Grant, *Violence in Jamaica’s High Schools*, 10 AFR. J. CRIMINOLOGY & JUST. STUD. 39, 40-41 (2017)).

130. See *id.* at 26.

131. See Jones & Jemmott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 188.

132. See *id.* at 190.

133. Abigail Gill, *Updating the Criminal Law on Child Neglect: Protecting Children from Severe Emotional Abuse*, 2 IALS STUDENT L. REV. 41, 42 (2014) (citing JAMES GARBARINO ET AL., *THE PSYCHOLOGICALLY BATTERED CHILD* (Jossey-Bass ed., 1986)); see James A. Roffee, *Incest in Scots Law: Missed Opportunities in the Scottish Law Commission Review*, 10 CONTEMP. ISSUES L. 168, 175 (2010) (“Incest is a violation of a position of trust, power, and protection.” (quoting MIKE LEW, *VICTIMS NO LONGER* 29 (Nevraumont Publishing Co. ed., 2004))).

including the strong culture of silence that accompanies child sexual abuse¹³⁴ and the “deep reluctance to believe that children may be sexually abused in their own homes.”¹³⁵ In many societies, intrafamilial child sexual abuse is synonymous with incest and carries the incest taboo. The second form, extrafamilial child sexual abuse, is perpetrated by individuals unrelated to the child victim by blood or affinity and typically occurs outside of the home.¹³⁶ Extrafamilial child sexual abuse is more likely to be reported than intrafamilial child sexual abuse.¹³⁷

The third form of child sexual abuse is transactional child sexual abuse which is sexual relations or interactions with a male or female child exchanged for money, goods, and favors.¹³⁸ Transactional child sexual abuse primarily involves older men and teenage girls, and “increasingly adolescent boys.”¹³⁹ Children involved in transactional sex are not viewed as victims.¹⁴⁰ Instead, transactional child sexual abuse in Jamaica is normalized and viewed as any other quid pro quo transaction.¹⁴¹ Inconsiderate to the psychological and emotional harm of early sexualization on children, the male offenders often haughtily conclude that they are merely helping poor families when they engage in transactional sexual relations with the underage girls, and boys, some of whom are under the age of twelve years old.¹⁴² Parents, communities, and officials are often aware of incidences of transactional child sexual abuse and either condone it or turn a blind eye, following a pattern of nonchalance, “a no nothing,” and acceptance.¹⁴³ Consequently,

134. See UNICEF, *STAINED BY VIOLENCE*, *supra* note 109, at 8 (“Widespread inter-generational and transactional sex, harmful social norms and a culture of silence The perception that some forms of violence are an ordinary part of growing up can make child victims less likely to report or think of themselves as in need of help.”).

135. J. S. La Fontaine, *Child Sexual Abuse and the Incest Taboo: Practical Problems and Theoretical Issues*, 23 MAN J. ROYAL ANTHROPOLOGICAL INST. 1, 10 (1988).

136. See Hibbert, *Incest ‘Hot Spot’*, *supra* note 112 (stating details from a study by Jamaica’s National Plan of Action for an Integrated Response to Children and Violence 2018 – 2023 which revealed that “a majority of the sexual abuse cases reported, the perpetrator was known by the victim – a relative, friend, acquaintance, or intimate partner – while the minority of cases were perpetrated by a stranger”).

137. See La Fontaine, *supra* note 135, at 10.

138. See Jones & Jemmott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 191.

139. See *id.* (“[Transactional sexual abuse] is committed primarily by men (although cases involving women were also reported) at all levels of society, including politicians and senior professionals.”).

140. See CAPRI, *supra* note 108, at 36.

141. See *id.*

142. See *id.*

143. See *id.* at 36-37.

transactional child sexual abuse often goes unpunished, denying the child the basic human right to be free from sexual abuse.¹⁴⁴

This Article focuses on intrafamilial sexual abuse, which reports indicate is on the rise in Jamaica.¹⁴⁵ A 2021 study by Caribbean Policy Research Institute documented an increase in intrafamilial child sexual abuse in Jamaica, particularly at the hands of stepfathers, and a mother's or a guardian's boyfriends.¹⁴⁶

B. *Intrafamilial Child Sexual Abuse, Incest, and the Incest Taboo*

Intrafamilial child sexual abuse is known as incest in many societies.¹⁴⁷ The word "incest" comes from the "Latin word *incestum* and refers to sexual union with a near relative."¹⁴⁸ Who is considered a near relative varies among societies and is based on how the society defines family.¹⁴⁹ Pre-modern Western societies defined family based solely on consanguineal bonds.¹⁵⁰ This means that only blood relatives could be considered family. During pre-modern times, societies were organized around kinship, sexuality, and strict lines of inheritance.¹⁵¹ Only blood relatives were considered legitimate

144. See Jones & Jemmott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 191.

145. See Albert Ferguson, *Incest rampant in Trelawny – police*, THE GLEANER (June 30, 2023, 12:42 AM), <https://jamaica-gleaner.com/article/news/20230630/incest-rampant-trelawny-police>.

146. See CAPRI, *supra* note 108, at 33; *St. Mary Police Report Disturbing Trend of Child Sexual Offences*, THE GLEANER (Jan. 15, 2021, 6:09 PM), <https://jamaica-gleaner.com/article/news/20210115/st-mary-police-report-disturbing-trend-child-sexual-offences> (featuring statement of Superintendent Bobette Morgan-Simpson about "sexual crimes especially those involving children being abused by their stepfathers while their mothers remain silent" with Morgan-Simpson stating that "[s]ome of these cases are not reported until a long time after and it is only some time when these children can't take it any longer; they have had enough, cup over-full that is when they decide to talk").

147. See Nahia Idoiaga Mondragon et al., *The Breaking of Secrecy: Analysis of the Hashtag #MeTooIncest Regarding Testimonies of Sexual Incest Abuse in Childhood*, 123 CHILD ABUSE & NEGLECT 1, 2 (2022) (equating incest abuse to intrafamilial sexual abuse) (first citing DOROTHEE DUSSY, *LE BERCEAU DES DOMINATIONS [The Cradle of Domination]* (2013); and then citing Donald E. Greydanus & Joav Merrick, *Incest: Child Sexual Abuse Within the Family*, 10 INT'L J. CHILD & ADOLESCENT HEALTH 295, 297 (2017)); Nancy L. Fischer, *Oedipus Wrecked? The Moral Boundaries of Incest*, 17 GENDER & SOC'Y 92, 97 (2003).

148. JONATHAN H. TURNER & ALEXANDRA MARYANSKI, *INCEST: ORIGINS OF THE TABOO* 1 (Routledge ed., 2016).

149. See Fischer, *supra* note 147, at 107; Sarah H. Ramsey, *Constructing Parenthood for Stepparents: Parents by Estoppel and De Facto Parents Under the American Law Institute's Principles of The Law of Family Dissolution*, 8 DUKE J. GENDER L. & POL'Y 285, 285-86 (2001) (citing AM. L. INST., *PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS* ch.2 (Matthew Bender & Co., Inc. ed., 2002)).

150. See Fischer, *supra* note 147, at 107.

151. See *id.* at 94 (first citing MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY, VOLUME 1: AN INTRODUCTION* 106 (Robert Hurley trans. Random House Inc. ed., 1978); CLAUDE LÉVI-

heirs.¹⁵² Consequently, to ensure that “wealth circulated among families only though legitimate kin,”¹⁵³ social rule governed who could marry and restricted legitimate sexual relations solely to married partners.¹⁵⁴ “Marriage between a man and a woman was considered the foundation of the family and the only acceptable way of forming a new family.”¹⁵⁵

Contemporary modern Western societies have moved away from defining family based solely on consanguineal bonds.¹⁵⁶ More explicitly, the twentieth century heralded fundamental shifts in kinship that expanded the definition of family to include relations by blood, law, and also cohabitation.¹⁵⁷ This expansion has led to the recognition of a greater diversity of family forms such as “adoptive families, stepfamilies, families headed by cohabitants, and single-parent families.”¹⁵⁸ Today in many contemporary Western societies, reconstituted families and single-parent families have become more common than traditional nuclear families.¹⁵⁹ Rising divorce rates, remarriages, and the choice to parent but not to get married “have made reconstituted families—families configured with a mix of biological and step-relatives such as stepparents, stepsiblings, or half siblings,” and single-parent families “more common than the traditional nuclear family consisting of two parents and their biologically related children.”¹⁶⁰ Notwithstanding the visible and pervasive reality of diverse

STRAUSS, THE ELEMENTARY STRUCTURES OF KINSHIP (James Harle Bell & John Richard von Sturmer trans., Rodney Needham ed., 1969); then citing Gayle Rubin & Judith Butler, *Interview: Sexual Traffic*, 6 DIFFERENCES J. FEMINIST CULTURAL STUD. 62 (1994); and then citing JOHN D’EMILIO & ESTELLE B. FREEDMAN, *INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA* 4, 9 (2nd ed. 1997)).

152. *Id.*

153. *Id.*

154. *Id.*

155. Leeni Hansson, *Towards a Definition of the Family?*, in SPOTLIGHTS ON CONTEMPORARY FAMILY LIFE 11, 12 (Linden Farrer & William Lay eds., 2011).

156. See Fischer, *supra* note 147, at 95 (“[T]wentieth-century kinship has increasingly moved away from blood relations as defining families.”).

157. See *id.*

158. *Id.*

159. *Id.* (first citing Jane D. Bock, *Doing the Right Thing? Single Mothers by Choice and the Struggle for Legitimacy*, 14 GENDER & SOC’Y 62, 63-64 (2000); and then citing NAOMI MILLER, *SINGLE PARENTS BY CHOICE: A GROWING TREND IN FAMILY LIFE* 11-12 (1992)); see Tatjana Hörnle, *Consensual Adult Incest: A Sex Offense?*, 17 NEW CRIM. L. REV. 76, 94 (2014) (“In modern times, with numerous divorces, unmarried partners, and reproductive medicine, diverging forms of families have complemented the more traditional notion.”).

160. Fischer, *supra* note 147, at 95 (first citing STEPHANIE COONTZ, *THE WAY WE NEVER WERE: AMERICAN FAMILIES AND THE NOSTALGIA TRAP* 182 (BasicBooks ed., 1992); then citing ARLENE SKOLNICK, *EMBATTLED PARADISE: THE AMERICAN FAMILY IN AN AGE OF UNCERTAINTY* 130 (BasicBooks ed., 1991); then citing Bock, *supra* note 159; and then citing MILLER, *supra* note 159); see Margaret M. Mahoney, *Stepparents as Third Parties in Relation to*

family forms, some contemporary Western countries continue to define family solely based on consanguineal and legal ties.¹⁶¹ In a like manner, some of these countries continue to view the traditional nuclear family as the ideal family type and choose to recognize only a family “based on heterosexual marriage, children, and a common place of residence” as the “traditional normative family.”¹⁶²

The change in family structure has influenced a change in the definition of incest in some jurisdictions. In pre-modern Western societies when family was defined solely along consanguineal lines, incest was narrowly defined to include only sexual relations, and in some instances marriage—but not sexual relations—with blood relatives within the nuclear family.¹⁶³ Social rules strictly prohibited marriage and sexual relations between blood relatives within the nuclear family on the grounds that such sexual relations were morally wrong,¹⁶⁴ would contaminate the gene pool and cause genetically abnormal children, cause discord within the family, undermine the family structure, and “confuse lines of inheritance around which pre-modern society was organized.”¹⁶⁵ Put another way, incest was tabooed.

Their Stepchildren, 40 FAM. L. Q. 81, 82 (2006) [hereinafter Mahoney, *Stepparents as Third Parties*] (“In more recent decades, the number of stepfamilies in the United States has increased dramatically, due to the increased numbers of never-before-married mothers who marry men other than the fathers of their children and custodial parents who remarry following a divorce.”).

161. See Leeni Hansson, *supra* note 155, at 14.

162. *Id.* at 14-15 (first citing John Scanzoni, *From the Normal Family to Alternate Families to the Quest for Diversity with Interdependence*, 22 J. FAM. ISSUES 688, 695 (2001); and then citing Riitta Jallinoja, *Alternative Family Patterns; Their Lot in Family Sociology and in the Life-Worlds of Ordinary People*, 7 INNOVATION: EUR. J. SOC. SCIS. 15 (1994)); see Ramsey, *supra* note 149, at 285 (“The nuclear family, consisting of a married, heterosexual couple and their biological children, is still considered by many to be the preferred family form. However, a large number of children are not living in families that fit the nuclear family model because they have multiple adults in parental roles. Nonetheless, the nuclear family model is a powerful ideal and is used as a template to exclude those who do not fit within its pattern.”).

163. Fischer, *supra* note 147, at 93-94 (first citing FOUCAULT, *supra* note 151; then citing LÉVI-STRAUSS, *supra* note 153; then citing Rubin & Butler, *supra* note 151; and then citing D’EMILIO & FREEDMAN, *supra* note 151).

164. See Fischer, *supra* note 147, at 95 (citing VIKKI BELL, INTERROGATING INCEST: FEMINISM, FOUCAULT AND THE LAW 130 (Maureen Cain & Carol Smart eds., 1993)); see also Christine McNiece Metteer, *Some “Incest” Is Harmless Incest: Determining the Fundamental Right to Marry of Adults Related by Affinity Without Resorting to State Incest Statutes*, 10 KAN. J. L. & PUB. POL’Y 262, 273 (2000) (noting that the United States’ and England’s “long religious history of incest taboos,” states used community morals as another reason to justify prohibiting certain marriages) (first citing Margaret Mahoney, *A Legal Definition of the Stepfamily: The Example of Incest Regulation*, 8 BYU J. PUB. L. 21, 28 (1993) [hereinafter Mahoney, *Legal Definition of the Stepfamily*]; and then citing Carolyn Bratt, *Incest Statutes and the Fundamental Right of Marriage: Is Oedipus Free to Marry?* 18 FAM. L. Q. 257, 258 (1984)).

165. See Fischer, *supra* note 147, at 107; see Mahoney, *Legal Definition of the Stepfamily*, *supra* note 164, at 29 (“[T]he incest ban strengthens and stabilizes family relationships by removing the potential for sexual unions and jealousy within the family household.”).

Taboos are actions or behaviors typically deemed culturally unacceptable and prohibited by society.¹⁶⁶ Taboos influence all aspects of our lives, including “[t]he [way] we behave, dress, eat, and drive, as well as our sex life.”¹⁶⁷ The incest taboo made incest morally reprehensible and in some pre-modern societies, a crime.¹⁶⁸

Contemporary changes in family structure have expanded the definition of incest.¹⁶⁹ With the shift from the traditional nuclear family as the dominant family structure, contemporary Western societies are trending away from defining incest solely based on consanguinity. Instead, they are adopting a broader definition of incest that mirrors the modern family structure with a diversity of family forms.¹⁷⁰ As an example, in addition to biological incest, which is incest based on blood relations, some contemporary Western societies, such as the United Kingdom, recognize sociolegal incest.¹⁷¹ Sociolegal incest is defined as “sexual contact or attempted contact by an adult toward a child who is socio-legally but not genetically related to the [child] victim.”¹⁷² This means that the offender is not related to the victim by blood, but instead by law or affinity.¹⁷³ Victims of sociolegal incest typically include “stepchildren, adopted children, common-law children (i.e., the child of the offender’s romantic partner, with whom they had been living with for at least one year), and other legally related relatives (e.g., step-siblings).”¹⁷⁴

The rise in reconstituted and single-parent families, which often gives nonblood relatives increased access, power, and control over children within a household, has influenced scholars researching the impact of incest to

166. See Chaim Fershtman et al., *Taboos and Identity: Considering the Unthinkable*, 3 AM. ECON. J. MICROECONOMICS 139, 139 (2011).

167. *Id.*

168. See Bratt, *supra* note 164, at 257 (“The mere word ‘incest’ triggers strong feelings of revulsion in most people.”); Michelle Murray, *Problems with California’s Definition of Incest*, 11 J. CONTEMP. LEGAL ISSUES 104, 104-05 (2000) (“Incest taboos can be traced at least as far back as the Levitical Codes . . . The Old Testament’s prohibitions, for example, include the consanguineous relationships of parent-child, full siblings and half siblings, aunts/uncles and nephews/nieces, and the relationships-by-affinity of spouse’s sibling, spouse’s parent, spouse’s child, parent’s spouse, sibling’s spouse, child’s spouse, and aunt’s or uncle’s spouse.” (first quoting *Leviticus* 18:6-18; and then quoting *Leviticus* 20:11-21)).

169. See Fischer, *supra* note 147, at 107 (“Changes in institutions of family and kinship have transformed the meaning of incest.”).

170. See TURNER & MARYANSKI, *supra* note 148, at 2 (“While the incest taboo applies worldwide to the nuclear family, customs and laws often extend the prohibition to other relationships, well beyond the nuclear unit.”); Fischer, *supra* note 147, at 107.

171. See Lesleigh E. Pullman et al., *Differences Between Biological and Sociolegal Incest Offenders: A Meta-analysis*, 34 AGGRESSION & VIOLENT BEHAV. 228, 229 (2017).

172. *Id.*

173. *Id.*

174. *Id.*

advocate for an even broader definition of incest. Specifically, these scholars suggest that incest is, in large part, facilitated by power, access, and control, therefore the discussion of incest as a moral issue must consider power relations and an abuse of power.¹⁷⁵ They explained that morals and social norms centered on protecting children from sexual abuse necessitates an expansion in the meaning of incest to include “the sexual exploitation of emotional ties between relatives of all sorts including stepfamily, blood relatives, and chosen kin.”¹⁷⁶ In short, a modern definition of incest should “include anyone responsible for the care of the child, including a nonblood relative, step-parents, or anyone who has assumed a family role.”¹⁷⁷ A mother’s or guardian’s boyfriend or companion would fall within this modern definition of incest.

Like in pre-modern Western societies, incest in contemporary Western societies is considered a taboo. The incest taboo remains strong and universally recognized.¹⁷⁸ In fact, almost all cultures worldwide have proscribed incest, cementing its place as “the only universal taboo.”¹⁷⁹ Leading expert and researcher on crimes against children, David Finkelhor, describes incest as “the ultimate taboo”¹⁸⁰ and the “gravest violations of the rules of human society.”¹⁸¹ This is so, in large part, because of incest’s perceived power to produce genetically defective children; and threaten and destabilize the family—the foundation of society.¹⁸² As in pre-modern societies, the incest taboo is intended to protect against genetically defective

175. See Fischer, *supra* note 147, at 107.

176. *Id.*

177. Piazza & Lunderberg-Love, *supra* note 94, at 158 (citing KATHRYN BROHL & JOYCE CASE POTTER, *WHEN YOUR CHILD HAS BEEN MOLESTED: A PARENTS’ GUIDE TO HEALING AND RECOVERY* 165 (Jossey-Bass ed., 2004)).

178. See Note, *supra* note 64, at 2464 (first citing FOUCAULT, *supra* note 151; and then citing Bratt, *supra* note 164).

179. See Fershtman et al., *supra* note 166, at 140.

180. FINKELHOR, *supra* note 71, at 85.

181. *Id.*; see also Bratt, *supra* note 164, at 257 (“The mere word ‘incest’ triggers strong feelings of revulsion in most people.”); Pusch et al., *supra* note 78, at 2 (“[I]ncest taboo is valid across cultures, and feelings of disgust and rejection about the idea of sexual intercourse with a close relative are common among the general population.”) (citing Michael C. Seto et al., *The Puzzle of Intrafamilial Child Sexual Abuse: A Meta-Analysis Comparing Intrafamilial and Extrafamilial Offenders with Child Victims*, 39 CLINICAL PSYCH. REV. 42, 44 (2016)).

182. See Joyce McConnell, *Incest as Conundrum: Judicial Discourse on Private Wrong and Public Harm*, 1 TEX. J. WOMEN & L. 143, 163 (1992) (“[I]ncest ultimately harms society.”) (first citing HERBERT MAISCH, *INCEST* (Hans Giese & Fernando Henriques eds., Colin Bearne trans., 1972); and then citing Roland C. Summit, *Hidden Victims, Hidden Pain: Societal Avoidance of Child Sexual Abuse*, in *LASTING EFFECTS OF CHILD SEXUAL ABUSE* 39, 40 (Gail Elizabeth Wyatt & Gloria Johnson Powell eds., 1988)).

offspring and protect the integrity of the family unit and society.¹⁸³ The incest taboo also serves another important purpose, “permitting the development of children in safe environments, free of sexual exploitation.”¹⁸⁴ More explicitly, the incest taboo serves to protect children from sexual abuse at the hands of relatives and persons domiciled in the same household who exercise power and control over the children.¹⁸⁵ The incest taboo furthers a fundamental human rights goal that children should be free from sexual abuse in any environment, and particularly within their households.¹⁸⁶

C. Intrafamilial Child Sexual Abuse, Incest, and the Modern Family

Global research on intrafamilial child sexual abuse shows that intrafamilial child sexual abuse occurs in all family structures, including nuclear families, cohabiting families, and blended and single-parent families.¹⁸⁷ Intrafamilial child sexual abuse also happens in families of all

183. See Coleman, *supra* note 66, at 258 (Reasons advanced for the origin of the incest taboo include: protection against genetic defects in offspring; protection of the child victim; protection of the family unit; and protection of society.”); see also Murray, *supra* note 168, at 109 n.24 (“Over time, and from one period to another, society’s general attitude toward incest has vacillated in relation to five distinct rationales: religious tenets; quasi-scientific beliefs about genetics; protection of the family unit (preventing sexual competition within familial relationships); reinforcement of community norms (suppression of behavior the community condemns); and protection of children (preventing sexual molestation by adult relatives).” (citing AM. L. INST., COMMENTARY TO MODEL PENAL CODE § 230.2 at 402–07 (1980))).

184. See Zanita E. Fenton, *An Essay on Slavery’s Hidden Legacy: Social Hysteria and Structural Condonation of Incest*, 55 HOW. L.J. 319, 321 (2012) (citing Margaret Mead, *Anomalies in American Postdivorce Relationships*, in *DIVORCE AND AFTER* 97, 104–08 (Paul Bohannon ed., 1970)).

185. See Coleman, *supra* note 66, at 258; see also Mahoney, *Legal Definition of the Stepfamily*, *supra* note 164, at 29 (1993) (“A final justification for the regulation of sexual relationships between close relatives is the protection of weak family members from sexual overreaching by more powerful relatives, especially during childhood.” (citing AM. L. INST., *supra* note 185, § 230.2.2(e))); *Benton v. State*, 461 S.E.2d 202, 205 (1995) (Sears, J., concurring), *overruled by State v. Burns*, 829 S.E.2d 367, 374 (2019) (“First, the restriction forces family members to go outside their families to find sexual partners. Requiring people to pursue relationships outside family boundaries helps to form important economic and political alliances, and makes a larger society possible. A second purpose of the taboo, as the majority aptly points out, is maintaining the stability of the family hierarchy by protecting young family members from exploitation by older family members in positions of authority, and by reducing competition and jealous friction among family members.”).

186. See Fenton, *supra* note 184, at 321 (citing Mead, *supra* note 184, at 104).

187. Jones & Jemmott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 188 (“[i]ncest occurs in both rich and poor families, in all communities, cuts across social class and is not affected by levels of education, religious affiliation, professional status or social standing.”); see generally Pullman et al., *supra* note 171, at 228 (stating that child sexual abuse is prevalent globally and one third of the cases are perpetrated by family members).

economic, educational, and religious backgrounds.¹⁸⁸ Put another way, intrafamilial child sexual abuse occurs in rich and poor families, educated and undereducated families, and religious and secular families.¹⁸⁹

The prevailing narrative on intrafamilial child sexual abuse in many societies is that intrafamilial child sexual abuse occurs mostly in poor and non-traditional families.¹⁹⁰ This narrative lacks merit. There is a significant body of literature that supports the proposition that intrafamilial child sexual abuse occurs primarily in poorer families and non-traditional families, but there is an equally significant body of research that negates this proposition.¹⁹¹

To be clear, poverty increases the risk of intrafamilial child sexual abuse, and particularly in instances where poverty creates increased access to children in a household.¹⁹² This is typically so in poor families that experience inadequate housing, which reduces or takes away physical boundaries between adults and children. For example, when adults and children live in tight spaces or have to share beds, bedrooms, and unsecure bathrooms, typically the children become more vulnerable and exposed to the sexual activities of the adults.¹⁹³ Equally vulnerable are children in families and communities that are alienated from mainstream society or choose to live in social isolation.¹⁹⁴

Poverty also increases the risk of intrafamilial child sexual abuse particularly where a female parent or guardian must work multiple jobs or

188. See Jones & Jemmott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 189.

189. See *id.*

190. See Vivian Song, *France is Having Its Reckoning With Incest, in 2021*, VICE (Jan. 29, 2021, 1:48 PM), <https://www.vice.com/en/article/4ad55w/france-is-having-its-reckoning-with-incest-in-2021>; Gibson et al., *supra* note 77, at 111 (noting that sexual abuse of minors in Jamaica happens in poor, wealthy and middle class families) (citing UNITED NATIONS DEVELOPMENT PROGRAM, NATIONAL REPORTS ON THE SITUATION OF GENDER VIOLENCE AGAINST WOMEN: NATIONAL REPORT JAMAICA (1999)).

191. See CHILD SEXUAL ABUSE EASTERN CARIBBEAN: PERCEPTIONS, *supra* note 85, at 10 (stating that child sexual abuse occurs across all socioeconomic groups); see generally Candib, *supra* note 121, at 186 (“[H]istorical and contemporary studies reveal that the absence of a protective mother is a risk factor for intrafamilial sexual abuse.”) (first citing to Jillian Fleming et al., *A Study of Potential Risk Factors for Sexual Abuse in Childhood*, 21 CHILD ABUSE & NEGLECT 49 (1997); and then citing LINDA GORDON, *HEROES OF THEIR OWN LIVES: THE POLITICS AND HISTORY OF FAMILY VIOLENCE* (University of Illinois Press 1988)).

192. See CHILD SEXUAL ABUSE EASTERN CARIBBEAN: PERCEPTIONS, *supra* note 85, at 11.

193. See Bowman & Brundige, *supra* note 67 at 248 (first citing SAVE THE CHILDREN, A SECTOR REVIEW OF CHILD ABUSE AND EXPLOITATION IN SOUTH AFRICA (2003); then citing WOMEN AND L. IN SOUTHERN AFR. RSCH. TR. (BOTSWANA), *No Safe Place* (Lightbooks 2002); and then citing Tabisile Msezane, *Sexual Exploitation of Girl Children Growing Up on Farms*, in THE NATIONAL CONSULTATIVE CONFERENCE AGAINST THE SEXUAL EXPLOITATION OF CHILDREN 60 (Rose Barnes-September et al., eds., 1999)).

194. See Candib, *supra* note 121, at 195.

work outside the home and is away from home for extended periods leaving her children unsupervised;¹⁹⁵ or where a female head of household takes on multiple partners or a predatory partner to ensure the financial support of the household.¹⁹⁶

Poverty on its own, however, is only one of the many risk factors for incest. Incest also happens in rich and privileged families.¹⁹⁷ As French psychologist Marie Bréhu points out, “[t]he biggest myth around incest is that it only happens within poor families, in the countryside and rural areas, and among the lower, disadvantaged classes.”¹⁹⁸ Ms. Bréhu dispels this myth by pointing out that incest does not occur only in “one particular social class.”¹⁹⁹ Instead, incest occurs in all social classes and at all “levels of education, religious affiliation, professional status or social standing.”²⁰⁰ In one sense, “children in the best-off families may be most at risk.”²⁰¹ Sophie Legrand, a judge in the children’s court in the city of Tours, said social services authorities tend to intervene in families that are economically or socially deprived but “in very privileged social circles, there are rarely any signs of alert.”²⁰² In short, it is rare if at all, that incest in “best-off families” would be reported to the authorities leaving the victim to suffer in silence.²⁰³

Research overwhelmingly demonstrates that intrafamilial child sexual abuse is typically a crime of access and power.²⁰⁴ To explain, perpetrators of intrafamilial child sexual abuse typically have higher access to the child victim because the perpetrator typically lives in, or frequently visits, the

195. See CHILD SEXUAL ABUSE EASTERN CARIBBEAN: PERCEPTIONS, *supra* note 85, at 12 (“Respondents . . . identified inadequate parental supervision as a causal factor, especially with regard to mothers who were working late at night and allowing children to be supervised by their partners or boyfriends.”).

196. See *id.* at 12.

197. See Song, *supra* note 190.

198. *Id.*

199. *Id.*

200. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 12.

201. Robert Holloway, *In France, Breaking the Code of Silence on Incest*, NEWS DECODER (Mar. 15, 2021), <https://news-decoder.com/in-france-breaking-the-code-of-silence-on-incest/>.

202. *Id.*

203. *Id.*; see Ryon Jones, *Sexual Abuse a Harsh Reality For Hundreds of Jamaican Children*, THE GLEANER (Jan. 30, 2015, 1:20 PM), <http://jamaica-gleaner.com/article/news/20150208/sexual-abuse-harsh-reality-hundreds-jamaican-children> (stating that socioeconomic status affect the reporting of child sexual abuse in Jamaica since most cases reported to law enforcement are of low income people while “the upper class will go to their private doctors as they are trying to protect their image”).

204. See Pullman et al., *supra* note 171, at 231.

household where the child resides.²⁰⁵ Furthermore, for the most part, the perpetrator may have caregiving responsibilities, authority, and power over the child and the child typically considers the perpetrator as a protector.²⁰⁶ Overall, the relationship between the victim and perpetrator is typically characterized by power, dependence, and vulnerability.²⁰⁷ Perpetrators of intrafamilial child sexual abuse include biological fathers, mothers, siblings, aunts, uncles, grandparents, stepparents, stepsiblings, adoptive and foster parents, guardians, and mothers' boyfriends.²⁰⁸

The other blistering myth that intrafamilial child sexual abuse happens primarily in non-traditional families lacks merit because intrafamilial child sexual abuse is facilitated by access to the child.²⁰⁹ Studies show that in traditional nuclear family homes, where the child lives with two biological parents, the main offender is typically the biological father.²¹⁰ However, in homes where a nonbiological father such as a stepfather or an adoptive father is present, then the nonbiological father typically becomes the primary offender.²¹¹ Studies have shown that the "presence of a nonbiological father in the household," for example, a stepfather, or the mother's boyfriend, "significantly increases" a child's risk of becoming victim to intrafamilial child sexual abuse."²¹² In support of this observation, Susan Pusch explains in an article co-authored with other researchers that "the incest taboo might

205. See *id.* ("Higher access to children was defined as having more contact with children through work, use of leisure time, or at home, and could include primary caregiving responsibilities.").

206. *Id.*

207. See Hörnle, *supra* note 159, at 91 (providing an example in an adult situation involving police officers and inmate/suspect where "prisoner's or suspect's approval or disapproval is irrelevant; under such extreme circumstances of dependence, even explicit factual consent does not count as voluntarily given").

208. See Jones & Jemmott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 190; Gusti Ayu Kade Komalasari & Anak Agung Sagung Poetri Paraniti, *Incest in the Dimension of Sexual Violence Against Children*, 21 S.E. ASIA J. CONTEMP. BUS., ECON. & L., 232, 233 (2020); see also David Royce & Anthony A. Waits, *The Crime of Incest*, 5 N. KY. L. REV. 191, 192 (1978) (noting that father-daughter and step-father daughter incest are "the most common and produce [] the greatest harm to the familial structure").

209. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 198–99.

210. See La Fontaine, *supra* note 135, at 9–10.

211. See Pusch et al., *supra* note 78, at 7.

212. *Id.* ("[T]he probability of incestuous abuse was 3.2 times higher when the mother's partner was not the biological father, and . . . the risk of intrafamilial abuse was 2.6 times higher when a nonbiological father was living in the victim's household." (first citing Sandra S. Stroebel et al., *Risk Factors for Father-Daughter Incest: Data from an Anonymous Computerized Survey*, 25 SEXUAL ABUSE 583 (2013); and then citing Keith W. Beard et al., *Father-Daughter Incest: Effects, Risk-Factors, and a Proposal for a New Based Approach to Prevention*, 24 J. TREATMENT & PREVENTION 79, 102 (2017)).

be weaker for stepfathers, because they are not blood-related to the victims.”²¹³ What is clear and appears uncontroverted is that the risk of intrafamilial child sexual abuse increases in family structures that allow for multiple partners.²¹⁴ However, the presence of a stable stepfather or biological father does not indicate a reduced risk for child sexual abuse.²¹⁵ It is important to note, however, that while some men: fathers, stepfathers, other male relatives abuse children in their care, others do not.²¹⁶

III. INTRAFAMILIAL CSA IN JAMAICA

Jamaica has a widespread and national problem of intrafamilial child sexual abuse.²¹⁷ Anecdotal evidence garnered from newspaper articles and qualitative studies suggests that the problem is serious, longstanding, and pervasive.²¹⁸ Intrafamilial child sexual abuse and incest are often used interchangeably,²¹⁹ however the crime of incest in Jamaica is limited to heterosexual sexual intercourse between near blood relatives.²²⁰ Consequently, this Article uses intrafamilial child sexual abuse to refer to child sexual abuse at the hands of relatives, including those with biological and sociolegal bonds and those that live in or exercise power and influence in the household occupied by the child.

As with most contemporary Western societies, and perhaps even before many of these societies, Jamaica’s main family structure has long shifted from a traditional nuclear family as the traditional normative family to a variety of family structures ranging from traditional nuclear families, to

213. See *id.* at 3 (citing Jan Faust et al., *Differences in Family Functioning of Sexually Abused vs. Nonabused Enuretics*, 12 J. FAM. VIOLENCE 405, 405 (1997)).

214. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 12.

215. See *id.*

216. See *id.*

217. See Samms & Cholewa, *supra* note 111, at 115-16 (citing UNICEF, VIOLENCE AGAINST CHILDREN IN THE CARIBBEAN REGION REGIONAL ASSESSMENT 18 (2006), https://bco.wimp.bz/file_directory/files/situational_analysis_belize/20061019ViolenceAgainstChildren.pdf); Gibson et al., *supra* note 77, at 116 (recommending that child sexual abuse in Jamaica should be treated as a public health issue); Hibbert, *Incest ‘Hot Spot’*, *supra* note 112 (detailing an interview with the executive director of Eve for Life (EFL) who indicated that incest in Jamaica “remains an islandwide problem” and communities in some parishes appear to have “a culture of incest” because of the reported high levels of incest.) EFL is a non-government organization in Jamaica that supports “young women and children living with or impacted by HIV/AIDS.” *Who We Are?*, EVE FOR LIFE, <https://eveforlife.org/about/> (last visited Sept. 18, 2024).

218. See generally UNICEF, STAINED BY VIOLENCE, *supra* note 109, at 8 (“Sexual violence is one of the most unsettling violations of children’s rights, and one of the most rampant forms of violence against children in Jamaica.”).

219. See Pusch et al., *supra* note 78, at 2.

220. See Sexual Offences Act § 7.

cohabitating families, blended families, and single-parent families.²²¹ Consequently, family in Jamaica is not defined solely by consanguinity but also by affinity and co-residence.²²²

In Jamaica, the most common family structure is the single-parent family.²²³ Typically, a female, often the mother or guardian, assumes primary parental responsibility for the children in a Jamaican single-parent family.²²⁴ It is also highly common for someone who is not the child's parent or legal guardian to assume a parental role.²²⁵ This reason, in part, led the 2001 Jamaica Census Bureau to posit that households "provide a more realistic description of the base unit in which formation of the child takes place."²²⁶ The Jamaica Census Bureau defines a household as "consist[ing] of one person who lives alone or [in] a group of persons who, as a unit, jointly occupies the whole or part of a dwelling unit, who have common arrangements for housekeeping, and who generally share at least one meal."²²⁷ "The household may be composed of related persons only, unrelated persons, or of a combination of both."²²⁸

221. See Kay Pasley & Raymond E. Petren, Family Structure, in THE WILEY BLACKWELL ENCYCLOPEDIA OF FAM. STUD. 1, 1-2 (Constance L. Shehan ed., 2015) ("[A] household share[s] one or no parents. The presence of a stepparent, stepsibling, or half-sibling designates a family as blended.").

222. See Sonia M. Jackson, *The Jamaican Situation*, STATISTICAL INSTITUTE OF JAMAICA, https://unstats.un.org/unsd/demographic/meetings/egm/NewYork_8-12Sep.2008/EGM%20PowerPoints/Jamaica%20-%20Family%20&%20Community.ppt ("Family is a group of people affiliated by consanguinity, affinity and co-residence."); Elsie Le Franc et al., *Working Women's Sexual Risk Taking in Jamaica*, 42 SOC. SCI. MED. 1411, 1411 (1996) ("In Jamaica, one of the clearest examples of what has been called 'cognitive dissonance' is the high levels of religiosity and participation in formal religious institutions that co-exist with widespread relationships (namely 'visiting unions' and 'common-law marriages') that are strongly condemned by the churches." (first citing DIANE J. AUSTIN, URBAN LIFE IN KINGSTON, JAMAICA: THE CULTURE AND CLASS IDEOLOGY OF TWO NEIGHBORHOODS (Gordon and Breach Science Publishers ed., 1984); and then citing ELSA LEO-RHYNIE, THE JAMAICAN FAMILY: CONTINUITY AND CHANGE (Grace, Kennedy Foundation ed., 1993))).

223. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 12 (identifying that in the Caribbean 50% of households are "female single-parent headed").

224. See *id.*; Dunlap et al., *supra* note 69, at 20 (citing M. BELINDA TUCKER & CLAUDIA MITCHELL-KERNAN, THE DECLINE IN MARRIAGE AMONG AFRICAN AMERICANS: CAUSES, CONSEQUENCES, AND POLICY IMPLICATIONS 11, 13 (Belinda Tucker & Claudia Mitchell-Kernan eds., 1995)).

225. See Dunlap et al., *supra* note 69, at 20.

226. See generally *Jamaica Census 2001*, STATIN <https://statinja.gov.jm/Popcensus.aspx> (date last visited Sept. 4, 2024).

227. IPUMUS International, *Jamaica Census 2001 Enumeration Manual* 16 https://international.ipums.org/international/resources/enum_materials_pdf/enum_instruct_jm2001a.pdf.

228. *Id.* at 16.

Today, approximately 45% of all Jamaican households are headed by a female single-parent.²²⁹ This number is expected to remain consistent or increase in light of data from Jamaica's 2001 Census study, which concluded that the population is typically "not the marrying type."²³⁰ Based on data from the Census survey, approximately 90% of persons aged sixteen and above have never been married.²³¹

A proverbial elephant in the room, but a fact not to be ignored when considering Jamaican family types and households, is the prevalence of misattributed paternity. Jamaica is known to have a high rate of misattributed paternity.²³² Misattributed paternity, or paternity fraud, is commonly referred to as "jacket" in Jamaica.²³³ Misattributed paternity—or a "jacket"—occurs when the mother identifies a man as the biological father of her child, knowing the man is not the child's biological father."²³⁴ According to a study by Dr. Herbert Gayle, a sociologist at the University of the West Indies, approximately 20% of Jamaican men are raising children who are not their biological children.²³⁵ Oftentimes, these men believe that the children are their biological children.²³⁶ In fact, the study revealed that misattributed paternity happens at all socioeconomic levels of the society.²³⁷ To note, "a sample of 2,000 people from the upper middle, middle, near poor or lower middle class, and poor people, [] indicate that 20 per cent, or one in five people, experience paternity fraud."²³⁸ Data on paternity fraud indicates that approximately 13% of women over 60 years old admitted to committing paternity fraud; 18% of women 54 to 59; and 16% of women 36 to 41 years

229. See Bose-Duker et al., *supra* note 68.

230. See Jackson, *supra* note 222, at 10.

231. *Id.*

232. See Paul A. Bourne et al., *The Perspectives and Practices of Women on Paternity Fraud in Jamaica: Post COVID-19*, 8 INT'L J. HUMAN. & SOC. SCI. INSIGHTS & TRANSFORMATIONS 1, 2 (2023) [hereinafter *Women on Paternity Fraud in Jamaica*] (stating that misattributed paternity in Jamaica is "prevalen[t]").

233. See *id.* (citing Heather Draper, *Paternity Fraud and Compensation for Misattributed Paternity*, 33 J. MED. ETHICS 475, 475 (2007)).

234. *Id.*

235. See Kimberley Hibbert, *DNA Backlash*, JAM. OBSERVER (Nov. 11, 2021), <https://www.jamaicaobserver.com/news/dna-backlash/> [hereinafter *DNA Backlash*]; Bourne et al., *supra* note 232, at 3 ("[A] study by Dr. Herbert Gayle in 2016 shows that 25% of men mind 'jackets.'").

236. See Bourne et al., *supra* note 232, at 2 ("[S]ome 25 per cent of Jamaican men are unknowingly raising children that are not biologically theirs." (citing Monday Richmond Efut & Amarachi Chiagoziem, *Paternity Fraud: Examining its Causes, Tort of Deceit and Victims Compensation*, 9 GLOB. SCI. J. 738, 738 (2021))).

237. See *DNA Backlash*, *supra* note 235.

238. *Id.*

old, also admitted to committing paternity fraud.²³⁹ The practice of paternity fraud increases the possibility that a man could spend years raising children who he and others believe are his biological children, but if tested, DNA tests could reveal otherwise.

It is no secret that intrafamilial child sexual abuse in Jamaica happens in all families, rich and poor, educated and undereducated, religious and secular, and in households including single-family and traditional nuclear family households.²⁴⁰ The main perpetrators of intrafamilial child sexual abuse are often adult men, and most typically the mother's or guardian's boyfriends, the children's stepfathers, and biological fathers.²⁴¹ Data from the Jamaica Constabulary Force (JCF) showed generally that "the perpetrators of incest to be between 35 to 49 years old."²⁴²

In Jamaica, like elsewhere, intrafamilial child sexual abuse is a crime of access, power, and control. Increased access to children in their household, a place where they should be safe and protected, increases their vulnerability and risk of being sexually abused.²⁴³ For example, in a single female-headed household in Jamaica, the adult male in the household is typically the mother's boyfriend or boyfriends.²⁴⁴ In many instances, the adult male-female relationships are temporary resulting in short-term relationships²⁴⁵ with several transient male partners who leave the relationship after a short while.²⁴⁶ Multiple and serial partnering are generally common,²⁴⁷ but are

239. See Bourne et al., *supra* note 232, at 8 (stating that by age cohort, women knowingly committed paternity fraud: 36-41 years old: 15.7%; 54-59 years old: 18.3%; 60+ years old: 13.1%); see also Corey Robinson, *Who's the Daddy? More Women Requesting Paternity Tests to Verify Whether Sons, Brothers, Husbands Being Given 'Jackets,'* THE GLEANER (Feb. 19, 2023, 1:03 AM), <https://jamaica-gleaner.com/article/lead-stories/20230219/whos-daddy#:~:text=The%20same%20study%20revealed%20that,been%20victims%20of%20paternity%20fraud> ("[A recent cross-sectional study by the Northern Caribbean University (NCU)] revealed that 67 per cent of Jamaican females said they knew of another woman who had committed paternity fraud; and that 26 per cent of Jamaican fathers who took part in the study admitted that they had been victims of paternity fraud.").

240. JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 12.

241. See *id.*

242. See *Incest Alive in Jamaica*, *supra* note 118.

243. See Komalasari & Paraniti, *supra* note 208, at 233 ("The house is supposed to be a safe shelter for children, but the fact is that the house actually becomes a place of sexual violence against children committed by family members themselves.").

244. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 12.

245. See *id.*

246. See Dunlap et al., *supra* note 69, at 20 (defining transient males as males that typically are invited in a household and shortly afterwards leave).

247. See Le Franc et al., *supra* note 222, at 1413-15 (defining multiple partnership as including both simultaneous partnerships and serial relationships and stating that "multiple partnership is culturally sanctioned." (first citing to Nancie L. Solien, *Household and Family in the Caribbean: Some Definitions and Concepts*, 9 SOC. & ECON. STUD. 101, 105 (1960); and

even more common in instances where women enter into successive temporary relationships as a means of economic survival for themselves and their household.²⁴⁸ To explain, some women bring several successive male partners into the household, often to ensure continued financial support for themselves and their household.²⁴⁹ An obvious downside, however, is that allowing multiple partners into the household increases access to children occupants, which, in turn, increases the children's exposure to sexual abuse within the household.²⁵⁰ It is well documented that multiple or serial partnering exposes children in a household to several stepfathers or mother's or guardian's boyfriends, consequently increasing the children's risk for sexual abuse.²⁵¹ This increased risk exposure of children in the household to sexual abuse is particularly relevant in instances where the female head of household does not do the due diligence necessary to assess the men's character or, she may be aware but choose to ignore the men's propensity for violence and sexual abuse.²⁵² Also particularly relevant with intrafamilial sexual abuse, "[t]he existence of perpetrators and victims in the same place will provide a very large opportunity for perpetrators to commit sexual violence against victims."²⁵³

In Jamaica, when an adult male is present in the household, he often assumes a traditional family role, exercising power and authority over the children in the household.²⁵⁴ In instances where the male is the children's stepfather or the mother's boyfriend, even in an albeit transient relationship, he typically becomes an integral member of the family and exercises power

then citing to Hymie Rubenstein, *Caribbean Family and Household Organization: Some Conceptual Clarifications*, 14 J. COMPAR. STUD. 283, 293–94 (1983))).

248. See *id.* at 1413–14 (explaining that multiple partnerships have been described as “an economic survival or coping strategy.” (citing Solien, *supra* note 247; and then citing to Rubenstein, *supra* note 247, at 293–94)).

249. See *id.* (citing Solien, *supra* note 247; and then citing Rubenstein, *supra* note 248); see also KARYL POWELL BOOTH ET AL., “IT AFFECTS YOU FOR A LIFETIME”! PERSPECTIVES ON CHILD SEXUAL ABUSE IN JAMAICA 44 (Univ. of Huddersfield Queensgate ed., 2021) [hereinafter IT AFFECTS YOU FOR A LIFETIME] (“In some cases, bringing persons into the home environment to visit or reside exposed children to perpetrators of abuse.”); JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 150 (“[I]dentified single parent families, the presence of a step-father or boyfriend, and an unstable family situation, allowing a succession of partners without much, if any, prior knowledge of character into the house, as contributing to [child sexual abuse].”).

250. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 12.

251. See *id.* (“While the presence of a stable stepfather does not indicate reduced risk, the study suggests that the presence of several stepfathers may increase it.”).

252. See *id.* at 150.

253. See Komalasari & Paraniti, *supra* note 208, at 235.

254. See Dunlap et al., *supra* note 69, at 24.

and authority over the children in the household.²⁵⁵ The mother or female guardian typically demands that the children in the household respect and obey him.²⁵⁶ As a sign of respect, the children may refer to him as ‘Uncle’ or ‘Mister’ and they typically look to him as the de facto father figure.²⁵⁷ Paradoxically, the adult male may view the children not as family members with whom he should form a nurturing parental bond, but as a part of a transactional package that comes only because of his association with the mother or female guardian.²⁵⁸ He may also take the perspective that the children are not his biological children and therefore, are not off limits to his sexual advances.²⁵⁹ The male’s ability to exercise power and control over the children, his increased access to them from being in the household, and the lack of paternal bond increase the children’s risk for sexual abuse.

There are several factors that have been posited to explain why children are sexually abused by persons who have power and control over them within the household, a place where they should feel safe and protected. High on the list are entrenched patriarchal cultural beliefs of power and entitlement to all females within the household, including female children.²⁶⁰ In fact, a study conducted in Jamaica revealed “that some men believe that they have a right to a sexual liaison with a girl who is under their care and protection.”²⁶¹ Put simply, some men, including the mother’s or guardian’s boyfriends, stepfathers, and biological fathers, believe that they have a right to have sex with the children in their care.²⁶² This belief is true and sometimes more

255. See *id.* at 20.

256. See *id.* at 24.

257. See *Culture and Etiquette in Jamaica*, ROUGH GUIDES, (Nov. 1, 2024) <https://www.roughguides.com/jamaica/culture-etiquette/>; Fernando Henriques, *Kinship and Death in America*, 12 *PHYLON* 272, 272 (1951).

258. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 31.

259. See Bowman & Brundige, *supra* note 67, at 242 (“[s]ignificance of abuse by stepfathers and uncles—stepfathers perhaps because they do not regard the child as their own . . .” (citing Inge Petersen et al., *Sexual Violence and Youth in South Africa: The Need for Community-based Prevention Interventions*, 29 *CHILD ABUSE & NEGLECT* 1233, 1241 (2005))); Patricia Phelan, *The Process of Incest: Biologic Father and Stepfather Families*, 10 *CHILD ABUSE & NEGLECT*, 531, 532 (1986) (“Some stepfathers construe the sexual behavior with their stepdaughter (and similar behavior by other stepfathers) as less ‘serious’ than the same actions would be between biological fathers and daughters with the rationale that the children are not blood relatives.”).

260. See Samms & Cholewa, *supra* note 111, at 116 (citing PAULO SERGIO PINHEIRO, *WORLD REPORT ON VIOLENCE AGAINST CHILDREN IN THE CARIBBEAN REGIONAL ASSESSMENT: UN SECRETARY GENERAL’S STUDY ON VIOLENCE AGAINST CHILDREN* 72 (2006), <https://violenceagainstchildren.un.org/content/un-study-violence-against-children>).

261. See Gardner et al., *supra* note 108, at 3, 12 (citing Griffin Benjermin et al., *Risk Factors for Child Abuse in Dominica* (2001), <https://global.uwi.edu/sites/default/files/bnccde/dominica/conference/papers/Benjamin.html>).

262. See *id.* (citing Benjermin et al., *supra* note 261).

pronounced, even among men who do not contribute financially to the household or are not the sole breadwinners.²⁶³ First, the patriarchal belief that underscores ownership of the female body causes some men to believe that they should be the child's first sexual experience and "they have an *obligation* to 'bring' [the child] into the world of sex."²⁶⁴ Second, it appears that the patriarchal belief of entitlement to sex with all women and children in the household is heightened when the men are financial contributors to the household and more so when they are the main breadwinners.²⁶⁵ In fact, a "common attitude among nonbiological fathers is" that children of their partners will "not eat[] [their] food for nothing."²⁶⁶ Put another way, some men and women with this entitlement belief, typically expect the children in the household who directly or indirectly benefit from the male breadwinner's financial provision to reciprocate with sexual favors.²⁶⁷

The predatory and transactional attitude of some men toward their non-biological children creates a paradoxical dilemma and increases the risk of child sexual abuse in the home particularly in instances where some women, albeit out of poverty, engage in the significant practice of calculated child-rearing as an "investment activity."²⁶⁸ This means that the women fall into a cycle of having children with several different male partners as a further step to guarantee financial support for themselves and their family, but this practice makes the children more vulnerable to sexual abuse, particularly where the male feels no biological connection to child²⁶⁹ and feels entitled to sex with the child for maintaining the household, a bargain the child did not make and does not have the capacity to make.²⁷⁰

263. See Heather Little-White, *Sex with Family*, THE GLEANER (May 31, 2009), <http://mobile.jamaicagleaner.com/20090531/out/out9.php> (noting that fathers who are "unsuccessful in earning a living at [their] social level" are "more likely to sexually victimise their daughters"); Bowman & Brundige, *supra* note 67, at 248 (explaining that men who are unemployed or underemployed typically experience a "loss of feeling of power" also described as a "crisis of masculinity" which creates a risk factor for child sexual abuse in which other forms of sexual violence are related to the "disempowerment and emasculation" of African men.) (first citing Romi Sigsworth, 'Anyone Can Be a Rapist...': An Overview of Sexual Violence in South Africa 19 (2009), [http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?id=110216&lng=en](http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?id=110216&lng=en;)); then citing Carol Bower, *The Relationship Between Child Abuse and Poverty*, in AGENDA: EMPOWERING WOMEN FOR GENDER EQUITY (2003); and then citing Denis McCrann et al., *Childhood Sexual Abuse Among University Students in Tanzania*, 30 CHILD ABUSE & NEGLECT 1343, 1344 (2006)).

264. Little-White, *supra* note 263 (emphasis added).

265. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 11.

266. *Id.*

267. See *id.*

268. See Le Franc et al., *supra* note 222, at 1414.

269. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 11.

270. See Jemmott & Maharaj, *supra* note 70, at 46.

Inadequate parental supervision and “child shifting” are also factors that increase a child’s risk of intrafamilial sexual abuse in Jamaica.²⁷¹ In some households, children are at heightened risk for sexual abuse when their mother or female guardian works outside the home, has multiple jobs, or has jobs that keep them outside the homes, particularly for long periods.²⁷² By de facto, the male adult partner is left in charge of the home and the children.²⁷³ This child-caring arrangement typically allows the father, stepfather, mother’s or guardian’s boyfriend, or other adult male unfettered access to the children in the household.²⁷⁴ Child shifting, “sending children to stay with friends and relatives for extended periods of time,”²⁷⁵ is another common practice in Jamaica that typically increases a child’s risk of intrafamilial child sexual abuse. To explain, in instances of child shifting where a child is sent to live with a relative, that relative and their partner or partners have unrestrained access to the child and may assume parental responsibilities for the child, but may not see the child as a close blood relative that would invoke the incest taboo.²⁷⁶ Consequently, the child becomes fair game for their predatory sexual practices.²⁷⁷

In Jamaica, inadequate housing caused by poverty or natural disaster also increases a child’s risk of intrafamilial child sexual abuse.²⁷⁸ To illustrate, Adele Jones’s and Ena Trotman Jemmott’s study of child sexual abuse in Barbados and other Eastern Caribbean Islands (sister islands to Jamaica) demonstrated that in overcrowded and tight living spaces “the physical proximity of adult males (in most cases step-fathers) to their step-

271. See *IT AFFECTS YOU FOR A LIFETIME*, *supra* note 249, at 43-45 (stating lack of proper supervision and child shifting as factors that increase the possibility of intrafamilial child sexual abuse (citing Christine Barrow & Martin Ince, *Early Childhood in the Caribbean* (Working Paper No. 47, 2008), <https://files.eric.ed.gov/fulltext/ED522741.pdf>)).

272. See *id.* at 43 (referencing Julia Rudolph et al., *Child Sexual Abuse Prevention Opportunities: Parenting, Programs, and the Reduction of Risk*, 23 *CHILD MALTREATMENT* 96, 101 (2017), <https://doi.org/10.1177/1077559517729479>).

273. See *CHILD SEXUAL ABUSE EASTERN CARIBBEAN: PERCEPTIONS*, *supra* note 85, at 12 (stating this occurs when “mothers who were working late at night and allow[] children to be supervised by their partners or boyfriends”).

274. See *id.*

275. See *FRAY ET AL.*, *supra* note 93, at 4.

276. See *IT AFFECTS YOU FOR A LIFETIME*, *supra* note 249, at 45 (citing Barrow & Ince, *supra* note 271); see also Rohan D. Jeremiah et al., *Exposing the Culture of Silence: Inhibiting Factors in the Prevention, Treatment, and Mitigation of Sexual Abuse in the Eastern Caribbean*, 66 *CHILD ABUSE & NEGLECT* 53, 58 (2017) (detailing the story of young woman in Trinidad who was raped by her uncle when she was twelve years old while she lived with her grandmother after her mother migrated to the United States).

277. See generally Bowman & Brundige, *supra* note 67, at 242 (“[S]ignificance of abuse by stepfathers and uncles—stepfathers perhaps because they do not regard the child as their own . . .”) (citing Petersen et al., *supra* note 263).

278. See Jones & Jemmott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 190.

daughters increased the risk that these girls would be abused.”²⁷⁹ This study and its findings could easily be transported to, and be relevant in, Jamaica because of the similarities among the islands.²⁸⁰ In most cases driven by poverty, children and adults sleep in the same bedroom or on the same bed, or mattress on the floor.²⁸¹ Also, there is often little or no privacy when the children go to the bathroom or makeshift bathrooms.²⁸² The tight living spaces and lack of privacy typically increase the occurrences of child sexual abuse.²⁸³

Like men, women in Jamaica also sexually abuse children in their family and household.²⁸⁴ Women sexually abuse their sons, daughters, step-children, and other relatives in their care.²⁸⁵ To note, while the reported incidents of “mother-son incest in Jamaica are rarer than father-daughter incest,” mother-son incest “is common enough to be discussed as some mothers feel that they have the right to initiate their sons into ways of having sex.”²⁸⁶ Still, the prevailing narrative and law surrounding intrafamilial sexual abuse that limit incest to penile sexual penetration often remove women from the cast of perceived incest perpetrators.²⁸⁷ It is true that women are less likely than men to inflict physical sexual harm, but they are equally culpable of causing severe psychological harm.²⁸⁸

More widely acknowledged in Jamaica, women are most often enablers and co-conspirators of intrafamilial child sexual abuse.²⁸⁹ Some women

279. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 216-17.

280. See *id.* at 7 (noting that the countries selected: Anguilla, Barbados, Dominica, Grenada, Montserrat, and St. Kitts and Nevis, “collectively considered representative of the region”).

281. See Jones & Jemmott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 189.

282. See JONES & JEMMOTT, ISSUES FOR BARBADOS, *supra* note 82, at 143.

283. See Jones & Jemmott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 189; see generally Anna Ramdass, ‘I have lived around incest’, DAILY EXPRESS, https://trinidadexpress.com/news/local/i-have-lived-around-incest/article_da2108e0-2f33-11e9-b957-bb6c2e483e78.html (last updated Feb. 13, 2019).

284. See *Mother from Hell - Woman Charged for Daughter’s Rape*, THE GLEANER (June 3, 2012, 12:00 AM), <https://jamaica-gleaner.com/gleaner/20120603/lead/lead33.html> [hereinafter *Mother from Hell*]; see FINKELHOR, *supra* note 71, at 93 (noting that women also sexually abuse children).

285. See Davis, *Incest Alive in Jamaica*, *supra* note 118 (“[C]ases involving activities between mothers and daughters.”).

286. Little-White, *supra* note 263.

287. See generally Sexual Offences Act.

288. See Candib, *supra* note 121, at 185-86.

289. See *Mother from Hell*, *supra* note 284 (detailing incidents where a mother held her fifteen-year-old daughter hostage so that she could be repeatedly raped by the mother’s fifty-seven-year-old male partner who had “indicated to the mother that the money would be cut off if the 15-year-old did not have sex with him”).

ignore and even encourage intrafamilial sexual abuse.²⁹⁰ When a child within the household or family is sexually abused, the women often contribute to the abuse by ignoring the abuse, “failing to protect children even when they are aware that abuse is going on, disbelieving the child, putting male partners before the protection of the child, minimising the harm that abuse does.”²⁹¹ Ignoring the abuse and failing to stop it compounds the harm to the child and signals to the abuser that it is okay to continue to abuse that child and other children in the household.²⁹² Equally damaging, some women are actively complicit in the sexual abuse of their children.²⁹³ Alarming, some women allow or actively encourage sexual abuse, often for *material gain* but also to satiate their male partner’s perverse desires and keep them from leaving the relationship.²⁹⁴ While it may be true that most women who encourage or allow their male partners to sexually abuse their children or children relatives in their household do so because they are dependent on the financial support of the male who is most likely the sole or primary breadwinner in the household,²⁹⁵ some women cannot envision living without the male partner, or do not want to upset the perception of a stable home, and as a result put his pedophilic desires before their children’s safety and wellbeing.²⁹⁶ As a concrete example, Greig Smith, Registrar of the Child Registry of Jamaica, says that he has “been summoned to court on a number of occasions in which parents, females, mothers, have been charged in conjunction with their boyfriend, husband, or stepfather for the sexual abuse of these children.”²⁹⁷

A. Harm of Intrafamilial Child Sexual Abuse to the Victim

Intrafamilial child sexual abuse, whether at the hands of a biological father, stepfather, mother’s boyfriend or other relative, causes significant

290. *See id.*

291. JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 10; *see also Mother from Hell*, *supra* note 284; *cf.* Candib, *supra* note 121, at 185 (“[T]he maternal response to the disclosure of incest is central in the daughter’s recovery.” (first citing JANIS TYLER JOHNSON, MOTHERS OF INCEST SURVIVORS: ANOTHER SIDE OF THE STORY (Indiana Univ. Press 1992); and then citing Margaret H. Myer, *A New Look at Mothers of Incest Victims*, 3 J. SOC. WORK & HUM. SEXUALITY 47 (1985)).

292. *See* Jeremiah et al., *supra* note 276, at 58.

293. *Cf.* JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 229.

294. *See id.* at 10.

295. *See* Wilson-James, *supra* note 70, at 161; CHILD SEXUAL ABUSE EASTERN CARIBBEAN: PERCEPTIONS, *supra* note 85, at 23 (“Poverty, which compels single mothers who are unable to sufficiently provide for their family, and economically dependent on men, to ignore abuse within the home in order ensure the family’s economic survival.”).

296. *See* Claudia Ghica-Lemarchand, *Incest in French Law: A New Offence for an Old Prohibition*, 60 INT’L ANNALS CRIMINOLOGY 43, 44 (2022).

297. Jones, *supra* note 203.

harm to the child, the family, and society. Victims of intrafamilial sexual abuse typically suffer devastating emotional, psychological, and physical harm.²⁹⁸ Harm occurs whether the abuser is male or female.²⁹⁹ Physical harm is typically most visible and arguably most likely to be acknowledged and treated.³⁰⁰ Unlike physical harm, emotional and psychological harm are typically invisible and consequently can go unnoticed and untreated resulting in more harm to the victim and by extension society.³⁰¹ It is well-documented that victims of child sexual abuse typically suffer serious mental and emotional harms,³⁰² but victims of intrafamilial child sexual abuse “have been found to experience greater negative consequences than victims of child abuse committed by non-relatives.”³⁰³ Scholars and researchers examining sexual abuse have posited that “child sexual abuse is the most heinous form

298. See Bowman & Brundige, *supra* note 67, at 285–86 (citing Joseph H. Beitchman et al., *A Review of the Short-Term Effects of Child Sexual Abuse*, 15 J. CHILD ABUSE & NEGLECT 537, 548 (1991)); see generally Lucinda Moore, *Growing Up Maya Angelou*, SMITHSONIAN MAG. (April 2003), <https://www.smithsonianmag.com/arts-culture/growing-up-maya-angelou-79582387/> (noting that Maya Angelou was raped by her mother’s boyfriend at the age of eight years old and when the perpetrator was found dead, Maya believed that she was responsible for the perpetrator’s death because she reported the rape).

299. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 10.

300. See *id.* at 238 (listing some physical consequences to victims of sexual abuse such as “injury to reproductive organs, STIs, HIV, abortion and associated risks”).

301. *Id.*

302. See Pullman et al., *supra* note 171, at 228 (first citing David M. Fergusson et al., *Childhood Sexual Abuse and Adult Developmental Outcomes: Findings from a 30-Year Longitudinal Study in New Zealand*, 37 CHILD ABUSE & NEGLECT 664 (2013); then citing Kathleen L. Ratican, *Sexual Abuse Survivors: Identifying Symptoms and Special Treatment Considerations*, 71 J. COUNSELING & DEV. 33 (1992); and then citing Ron Roberts et al., *The Effects of Child Sexual Abuse in Later Family Life: Mental Health, Parenting and Adjustment of Offspring*, 28 CHILD ABUSE & NEGLECT 525 (2004)).

303. *Id.* (citing Sandra S. Stroebel et al., *Father-Daughter Incest: Data From an Anonymous Computerized Survey*, 21 J. CHILD SEXUAL ABUSE 176 (2012)); see also Michael H. Stone, *Individual Psychotherapy with Victims of Incest*, 12 PSYCHIATRIC CLINICS N. AM. 237, 237 (1989) (“Psychological damage . . . [is] most serious when the offending relative is of an older generation and had clearcut protective obligations toward the victim: father or stepfather, as opposed to uncle or grandfather.”); Bowman & Brundige, *supra* note 67, at 285–86 (“The psychological consequences of child sex abuse may be particularly acute in the case of a child who has been a victim of incest. Abuse by a father or stepfather has been found to correlate with increased mental health harm. A South African study found that sexual violence by stepfathers caused adolescent victims significantly more emotional distress than sexual violence experienced by victims of other perpetrators. These heightened mental health effects relate to a child’s feelings of betrayal at being abused by a family member, particularly a parental figure, who had occupied a position of trust.” (first citing Joseph H. Beitchman et al., *A Review of the Short-Term Effects of Child Sexual Abuse*, 15 CHILD ABUSE & NEGLECT 537 (1991); and then citing Mary Sibongile Mkhize, *An Investigation of the Relationship Between Childhood Sexual Abuse Experiences and Psychosocial Adjustment in a Sample of Black South African Adolescents* (2009) (M.A. thesis, University of KwaZulu-Natal, Pietermaritzburg)).

of abuse . . . ,”³⁰⁴ with unique trauma consequences particularly when the child trusts or depends on the perpetrator.³⁰⁵ To explain, when a child is abused by a trusted parental figure, the child typically suffers from increased mental health harms because of the child’s feeling of betrayal.³⁰⁶

Both girl and boy victims of intrafamilial child sexual abuse typically experience emotional and psychological harm that includes aggression, depression, low self-esteem, substance abuse, poor school performance, suicidal ideation, rage, violent behavior, hyper-sexuality, problems with authority, overeating, poor impulse control, and difficulties in forming and maintaining inter-personal relationships.³⁰⁷ It is important to highlight, however, that boys typically suffer more severe psychological damage from intrafamilial child sexual abuse than girls.³⁰⁸ In fact, a study from the United States demonstrates that males who experience sexual abuse are “5.64 times more likely to develop [Post-Traumatic Stress Disorder (PTSD)]” than those who were not abused, whereas female survivors are “2.14 times more likely to develop PTSD than those who were not abused.”³⁰⁹ Relatedly, “males with a history of CSA are at a higher risk for suicidal ideation”³¹⁰ “and are more likely than girls to act out in aggressive and antisocial ways as a result of abuse.”³¹¹

Jamaica is a hugely gendered and homophobic society which highly influences how boy victims and other members of the population perceive the impact of intrafamilial child sexual abuse on boy victims.³¹² To explain,

304. Janice Haaken, *Sexual Abuse, Recovered Memory, and Therapeutic Practice: A Feminist Psychoanalytic Perspective*, 40 SOCIAL TEXT 115, 122 (1994).

305. See David Finkelhor & Angela Browne, *The Traumatic Impact of Child Sexual Abuse: A Conceptualization*, 55 AMER. J. ORTHOPSYCHIATRY 530, 530-31 (1985); see also Cynthia Godsoe, *Redrawing the Boundaries of Relational Crime*, 69 ALA. L. REV. 169, 193 (2017).

306. See Bowman & Brundige, *supra* note 67, at 285–86; (citing Mkhize, *supra* note 307); see also Ellen Edge Katz, *Incestuous Families*, 1983 DET. C. L. REV. 79, 86 (1983) (“To the child, the violation of family trust is psychologically damaging.” (citing ROBERT L. GEISER, HIDDEN VICTIMS: THE SEXUAL ABUSE OF CHILDREN 58 (Beacon Press ed., 1979))).

307. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 14; see also Little-White, *supra* note 263 (“Very often, incest victims end up as prostitutes, engage in petty crimes and may eventually molest children of their own sex.”); Jeremiah et al., *supra* note 276, at 54 (citing Shanta R. Dube et al., *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. PREVENTATIVE MED. 430, 431 (2005)).

308. See IT AFFECTS YOU FOR A LIFETIME, *supra* note 249, at 90.

309. Rochelle F. Hanson et al., *Relations Among Gender, Violence Exposure, and Mental Health: The National Survey of Adolescents*, 78 AM. J. ORTHOPSYCHIATRY 313, 316 (2008).

310. IT AFFECTS YOU FOR A LIFETIME, *supra* note 249, at 90.

311. Finkelhor, *Nature of Child Sexual Abuse*, *supra* note 80 at 47 (citing FRANK G. BOLTON, JR. ET AL., MALES AT RISK: THE OTHER SIDE OF CHILD SEXUAL ABUSE 78–79 (Sage Publ’ns, Inc., ed., 1989)).

312. See *id.*

Jamaica's macho, masculine culture typically dictates that boys view sex with an unrelated older woman as a badge of honor and an "opportunit[y] to strengthen their masculinity."³¹³ This perspective does not necessarily follow where the female is a parent or parent figure, guardian, or close relative.³¹⁴ In fact, where boys are sexually abused by a female parent, parent-figure, guardian, or close relative, the boys tend to exhibit the range of psychosocial harm, including extreme aggression, depression, substance abuse, and difficulty relating to women.³¹⁵ The difficulty relating to women sometimes translates into a practice of having surface-level relationships with multiple female partners because of an inability to trust and form a solid relational bond with one woman.³¹⁶ When the abuser is male, the boy victim typically suffers from heightened trauma which is largely attributed to a "perceived stigma of homosexual connotations,"³¹⁷ which runs at the margins of Jamaica's deeply entrenched macho, masculine culture.³¹⁸ Consequently, the boy victim is often conditioned to keep the abuse a secret out of fear of being labeled a homosexual or he is silenced by his family out of fear of bringing shame onto them, and also out of fear for the boy's and their own physical safety. Overall, the abuse typically goes unreported to the authorities, the boy victim may never get the medical and social help he needs to heal the emotional wounds, and he sees the abuser go unpunished. Importantly, the abused boy typically suffers from extreme anger, uncertainty about his sexuality, and self loathe, which sometimes leads to psychotic breaks.³¹⁹ This observation is in line with research that shows that boys "with a history of

313. See IT AFFECTS YOU FOR A LIFETIME, *supra* note 249, at 88; see also Arthur Hall, *Women on the Prowl: Grown Women Sexually Abusing Teenage Boys Much More Frequently Than Reported*, THE GLEANER (Jan. 31, 2010), <https://mobile.jamaica-gleaner.com/20100131/lead/lead3.php>.

314. See JONES & JEMMOTT, ISSUES FOR BARBADOS, *supra* note 82, at 29 ("Furthermore we must disabuse ourselves of the popular misconception that sexual abuse by women is relatively harmless as compared to sexual abuse by men. While female perpetrators of abuse are very much in the minority and are less likely than men to use force and violence, they nevertheless inflict serious psychosocial damage on children.").

315. See Coleman, *supra* note 66, at 281 n.213 ("When the incestuous parent is the mother, the boy may have a very difficult time relating to women in the future."); see also Roffee, *supra* note 133, at 177 (agreeing that "mother-son incest is probably the most harmful of all, and that some believe that invariably the victim will become psychotic as a result of the relationship." (first citing JEAN RENVOIZE, INCEST: A FAMILY PATTERN 129-30 (Reutledge & Kegan Paul Ltd ed., 1982); and then citing Narcyz Lukianowicz, *Incest*, 120 BRIT. J. PSYCHIAT. 301 (1972)).

316. Hall, *supra* note 313.

317. IT AFFECTS YOU FOR A LIFETIME, *supra* note 249, at 88.

318. Keon West, *Jamaican Masculinity: Construction and Consequences*, THE GLEANER (Mar. 21, 2010), <https://jamaica-gleaner.com/gleaner/20100321/lead/lead9.html>.

319. Coleman, *supra* note 66, at 281.

CSA are at a higher risk for severe mental health problems and suicidal ideation.”³²⁰

The duration of the abuse further intensifies the impact on both girl and boy victims of child sexual abuse. Intrafamilial child sexual abuse typically occurs “over a longer period of time” which deepens the devastating impact on the child victim.³²¹ It is also most likely to occur over generations.³²² Research shows that continued or long-term intrafamilial child sexual abuse typically causes more severe psychological consequences to girl and boy victims, compared to “sexual abuse perpetrated once or by someone outside of the family.”³²³ Victims of continued or long-term child sexual abuse will most likely develop borderline personality disorder (BPD), post-traumatic stress disorder (PTSD), severe depression, schizoaffective illness, suicide ideation, substance abuse, and poor impulse control without proper medical intervention.³²⁴

A Jamaican female victim of intrafamilial child sexual abuse interviewed at age 48 reported having suicide ideation and was diagnosed with complex PTSD because of longstanding and ongoing sexual abuse at the hands of her biological father and stepfather.³²⁵ The victim was repeatedly sexually abused by her stepfather starting at age five while her mother “turned a blind eye” to the abuse.³²⁶ She went to live with her biological father and he too started to sexually abuse her when she turned nine years old.³²⁷ She ran away from her father and returned to her mother, but her stepfather continued to sexually abuse her.³²⁸ She described her ordeal as “being in a prison with no way out.”³²⁹ She mentioned feeling like she could not report the abuse to the police officers who frequented her father’s business place because “[t]hey were getting too much from him.”³³⁰ The victim also mentioned telling her primary school teacher about the abuse but “nothing came of it.”³³¹ She later became pregnant, and gave birth to her

320. IT AFFECTS YOU FOR A LIFETIME, *supra* note 249, at 90.

321. Finkelhor, *Nature of Child Sexual Abuse*, *supra* note 80, at 46.

322. See Jones & Jemmott, *Opinions on Child Sexual Abuse*, *supra* note 92, at 189 (“[I]ncest if often intergenerational.”).

323. Piazza & Lunderberg-Love, *supra* note 94, at 162.

324. Stone, *supra* note 303, at 238; Jeremiah et al., *supra* note 276, at 54.

325. Janet Silvera, *My Father Impregnated Me, Says 48-Year-Old*, THE GLEANER (June 2, 2023), <https://jamaica-gleaner.com/article/lead-stories/20230602/staggering-abuse> [hereinafter Silvera, *My Father Impregnated Me*].

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. *Id.*

331. *Id.*

father's child at the age of 17.³³² In explaining the victim's PTSD diagnosis, the clinical psychologist noted that the victim was "significantly affected" by "early exposure to abuse and the continual abuse by lack of meaningful intervention" which adversely affected her neural wiring.³³³ Drawing an important link between the harm caused by intrafamilial child sexual abuse and a victim's mental health, the clinical psychologist noted that "a lot of adult's mental health issues can be traced back to a trauma in childhood . . . [therefore] it is so important to safeguard the most vulnerable, which are children in the society."³³⁴

B. Harm to the Family and Society

In addition to harming the child victim, intrafamilial child sexual abuse also harms the family and society.³³⁵ Put more concretely, intrafamilial child sexual abuse can cause the disintegration of the family through jealousy, discord, and resentment³³⁶ and by the voluntary or involuntary removal of a parent or child.³³⁷ When the abuse is reported, the abuser or victim is typically removed from the household. Removing the victim or the offender often leaves the family to grieve the severed relationship. "In addition, although the sexually abused children are unquestionably the victims, clinicians should not rule out the fact that the parents and caregivers may also be emotionally impacted as a result of their child being sexually assaulted."³³⁸ Sometimes siblings, parents, guardians or other members of the household who want to help the victim but feel powerless to do so may also suffer from secondary trauma.³³⁹ Secondary trauma typically includes feelings such as confusion, helplessness, isolation, and excessive guilt and brings health consequences such as headaches, gastrointestinal difficulties,

332. *Id.*

333. *Id.*

334. *Id.*; see Burns, *supra* note 82 (pointing out that children are the most "vulnerable members of the family and society," they depend on adults for their survival and are sometimes victims of child sexual abuse "at the hands of adults who are responsible for their care and protection.").

335. Samms & Cholewa, *supra* note 111, at 123-24; see Roffee, *supra* note 133, at 172 (suggesting that intrafamilial sexual abuse harms the victims, perpetrators and other family members); McConnell, *supra* note 182, at 163.

336. Note, *supra* note 64, at 2464.

337. See JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 32 (Noting that in many instances the child does not report the sexual abuse out of fear for that the abusing father will be imprisoned.).

338. Samms & Cholewa, *supra* note 111, at 123.

339. Piazza & Lunderberg-Love, *supra* note 94, at 178 (noting that "secondary traumatic stress (STS), also known as compassion fatigue, may emerge when a non-offending parent or someone close to the child helps the incest victim through this crisis.").

susceptibility to illness, high blood pressure. . . .”³⁴⁰ Secondary trauma may continue even after the abuse has ended causing serious health issues.

Intrafamilial child sexual abuse also harms society by imposing a significant social and economic costs on society.³⁴¹ On the one hand, the immediate medical expense resulting from physical harm to the victims is often borne by the government as is future medical expense resulting from emotional and psychological harm. On the other hand, society typically suffers productivity losses where victims are incapacitated or function at diminished capacity because of the abuse and also where perpetrators are jailed. Importantly, the harm to society continues as “sometimes abused children become abusers as adolescents and adults.”³⁴²

C. Unreported and Underreported

There is no question that intrafamilial child sexual abuse in Jamaica is underreported. In fact, intrafamilial child sexual abuse in Jamaica often goes unreported even in light of a mandatory reporting requirement and the recognizable harm to the victims and to the society.³⁴³ As a direct consequence of the underreporting, national statistics on child sexual abuse fail to capture the true extent of the problem.³⁴⁴ There are several reasons, some culturally unique, that influence a parent’s, guardian’s, child’s, or third party’s decision not to report an incident of intrafamilial child sexual abuse. Chief among these reasons in Jamaica is the willingness of some women to turn a blind eye to the abuse, especially when the perpetrator is a romantic partner, breadwinner, or family member.³⁴⁵ Additional reasons are the strong

340. *Id.* at 178-79.

341. ANNE M. NURSE, CONFRONTING CHILD SEXUAL ABUSE: KNOWLEDGE TO ACTION 75-76 (2020).

342. Ena Trotman Jemmott, *Using Our Brain: Understanding the Effects of Child Sexual Abuse*, in UNDERSTANDING CHILD SEXUAL ABUSE: PERSPECTIVES FROM THE CARIBBEAN, *supra* note 70, at 76, 77 (pointing out that in a study of child sexual abuse in the Caribbean “[b]etween 40 and 80 per cent of adolescent sexual offenders” were victims of child sexual abuse.).

343. Samms & Cholewa, *supra* note 111, at 121, 122 (noting the mandatory reporting requirement in instances of child sexual abuse); Hibbert, *Incest ‘Hot Spot’*, *supra* note 112 (positing that reporting incest in Jamaica is “often a difficult task.”); see CAPRI, *supra* note 108, at 32 (acknowledging that child sexual abuse in Jamaica is underreported).

344. Little-White, *supra* note 263, at 1; see Gardner et al., *supra* note 108, at 9 (noting that there is likely a “significant underreporting” of child sexual abuse “across all countries of the Caribbean.” “Some of the suggested reasons for this underreporting are the fear of reprisal; shame amongst family members and the view that abuse is a private matter; the family’s economic dependence on the perpetrator; the child’s fear of the perpetrator; a lack of awareness of what constitutes abuse and neglect by parents and by other adults and professionals (for example, police, teachers, health professionals); a lack of awareness of the consequences of abuse and neglect; the social and cultural sanctioning of child abuse; and a lack of, or inefficient, reporting procedures.”).

345. See Wilson-James, *supra* note 70, at 163.

culture of silence that surrounds disclosing intrafamilial sexual abuse and violence; the culture of victim blaming; a fear of physical harm to anyone who discloses the abuse; and a lack of confidence in the judicial system to deliver justice when the child sexual abuse is reported.

Global research shows that an overwhelming number of women do not report child sexual abuse when the abusers are their partners or a relative.³⁴⁶ Specifically, approximately “(70.2%) of women dismiss the sexual abuse of a child when their partners or relatives are the abusers.”³⁴⁷ This means that seven out of every ten women fail to report child sexual abuse when the abuser is a relative or their partner. Similarly, in Jamaica, some women fail to report incidents of child sexual abuse particularly when the perpetrator is their romantic partner or a family member even where they know the men are sexually abusing their children.³⁴⁸ This is especially true when the abuser is the breadwinner in the family.³⁴⁹ Often these women are afraid of losing their romantic interest, financial support, or both.³⁵⁰ Consequently, the women typically turn a blind eye to abuse. Alarming, some women may go to great lengths to protect the perpetrator by silencing the child.³⁵¹ To explain, she may accuse the child of lying and threaten to punish the child; she may forbid the child from disclosing or further talking about the abuse;³⁵² she may manipulate the child into thinking the abuse was the child’s fault and the child wanted to be abused; and she may manipulate the child into feeling responsible for breaking up the family unit and destroying the economic support.³⁵³ In instances where a child or a third party reported the

346. Little-White, *supra* note 263, at 1 (noting that “[i]t is hard to get a general handle on the rate of incest in Jamaica as cases are not reported . . .”); see Wilson-James, *supra* note 70, at 63 (noting that underreporting of child sexual abuse is a global problem).

347. Wilson-James, *supra* note 70, at 37.

348. Candib, *supra* note 121, at 185 (“[W]omen . . . participate in the sexual abuse of their daughters” when they “know that their daughters are being sexually abused by their fathers or other male relatives” but ignore the abuse.).

349. JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 77; JONES & JEMMOTT, ISSUES FOR BARBADOS, *supra* note 82, at 118.

350. JONES & JEMMOTT, ISSUES FOR BARBADOS, *supra* note 82, at 33 (noting that child sexual abuse often goes unreported in “the absence of an ally for the child (the most powerful being the mother)”).

351. Wilson-James, *supra* note 70, at 163 (“Elaborate coverup schemes are also carried out to protect the perpetrator when it is someone of stature, a relative, or breadwinner of the family. Smith et al. (2019) found that Jamaican parents discourage their child from disclosing sexual abuse when the perpetrator is a relative.”); Hibbert, *Incest ‘Hot Spot’*, *supra* note 112 (describing incest in Jamaica as a “family secret.”).

352. Little-White, *supra* note 263 (mentioning that in instances of intrafamilial child sexual abuse “even when a child may tell an adult, especially mothers and step-mothers, the child victim is suspected of lying and it is not taken any farther.”); see Wilson-James, *supra* note 70, at 5.

353. Mondragon et al., *supra* note 147, at 3.

sexual abuse, it is similarly common for the mother or female guardian to use her best efforts to protect the perpetrator³⁵⁴ and keep him “out of prison.”³⁵⁵ As a common example, she may force the child to deny the abuse or retract their statements.

It is important to note that while it is true that some women know intrafamilial child sexual abuse is wrong, but they are willing to turn a blind eye to the abuse or execute elaborate coverups to protect the perpetrator because of financial or personal gain, some women do not report intrafamilial sex abuse because they genuinely do not think of intrafamilial child sexual abuse as abuse.³⁵⁶ Crushing, because sex between an adult male and a child, particularly adolescent girls, is typically normalized in Jamaica, some members of the society accept intrafamilial child sexual abuse as normal behavior even in light of the incest taboo.³⁵⁷ Using this same rationale, because intrafamilial child sexual abuse is often intergenerational some women are conditioned to normalize the abuse, especially if they or other family members were abused as children.³⁵⁸ Instead, they view the abuse as “inevitable,” or “just a little sex” and may not see a reason to report it, even [in cases] where the child becomes pregnant.³⁵⁹

Another key reason intrafamilial child sexual abuse in Jamaica is underreported is because of the culture of silence and shame surrounding child sexual abuse, particularly when the abuse happens within family.³⁶⁰ Because the Jamaican society is one that is largely built on pride, sexual abuse within the family consequently carries a lot of shame and the shame of intrafamilial sexual abuse is often misplaced on the female parent or guardian and the child who is accused of inviting the abuse or allowing it to happen. Pride, the fear of shame, and the cultural norm that forbids disclosing matters

354. Wilson-James, *supra* note 70, at 163 (“Elaborate coverup schemes are also carried out to protect the perpetrator when it is someone of stature, a relative, or breadwinner of the family. Smith et al. (2019) found that Jamaican parents discourage their child from disclosing sexual abuse when the perpetrator is a relative.”).

355. *See id.* at 149, 162 (noting that “about seven percent of victims chose not to report or disclose the sexual abuse to protect the perpetrator”).

356. JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 28.

357. *Id.* at 147-48.

358. *Id.* at 13.

359. *Mother from Hell*, *supra* note 284, at 2 (referencing comments from a mother regarding sexually active minor, “little sex nah kill you”); Wilson-James, *supra* note 70, at 109; Emma Davies et al., *Mandatory Reporting? Issues to Consider When Developing Legislation and Policy to Improve Discovery of Child Abuse*, 2 IALS L. REV. 9, 10 (2014); *See* Candib, *supra* note 121, at 197, 198 (noting the tacit acceptance of intrafamilial child sexual abuse and quoting a mother who in reference to the incestuous abuse of her child stated “I had to go through this; why should my daughter be spared?”).

360. Jeremiah et al., *supra* note 276, at 59.

in the household that are considered private ensures that the sexual abuse at home is not disclosed to anyone outside the home and certainly not to the authorities.³⁶¹ To “save face” and maintain the appearance of an intact family, particularly in more affluent families, the children are instructed to keep the abuse quiet.³⁶² Sometimes the abuse is addressed within the family but never reported, other times the mothers often turn a blind eye to the abuse and pretend not to notice it.³⁶³ When the perpetrator is held in “high” esteem and has power and status in his community, and when he is also the breadwinner there is a greater tendency to ignore intrafamilial child sexual abuse.³⁶⁴

Intrafamilial child sexual abuse thrives in silence.³⁶⁵ Not surprisingly, the culture of silence works to ensure that intrafamilial child sexual abuse is almost never reported. In the Jamaican culture, children are taught to obey adults, especially family members and adults who care and provide for them.³⁶⁶ Children are “aware of possible dire consequences if they disobey.”³⁶⁷ Consequently, a child is almost guaranteed not to resist the sexual advance and to remain silent about the abuse when the perpetrator is a trusted person in the child’s household who has power and control over the child. The child’s duty to obey and the adult’s exercise of power and control typically serve as an invisible chokehold that often renders the child mute.³⁶⁸

361. *Id.*

362. Wilson-James, *supra* note 70, at 149 (In Jamaica, “13% of victims believe incidents of sexual abuse is a personal and family matter.”).

363. Nadine Wilson-Harris, *3-Year-Old Daughter Raped by Landlord, Now Mother Fears Her Child has Suffered a Second Sexual Assault*, THE GLEANER (Jan. 23, 2015), <https://jamaica-gleaner.com/article/lead-stories/20150125/ruined-rape> (detailing an interview with a victim of incest whose father repeatedly sexually abused her and her sister. The victim noted that a neighbor told their mother of the suspected abuse. “Our mother did nothing. I don’t know why she did nothing. She said the only reason she let him stay is that she didn’t want another man to come into the house. She just wanted to make sure that we had both parents.”); Janet Silvera, *‘Dad raped us’ - Sisters Accuse Father of Years of Sexual Abuse*, THE GLEANER (May 17, 2009), <http://mobile.jamaicagleaner.com/20090517/lead/lead1.php> [hereinafter Silvera, *Dad raped us*] (recounting the story of four sisters whose father, a teacher, sexually abused them over several years. “The sisters claim his wife, their mother, turned a blind eye to the abuse. Mom’s response was, “It happen already, what would you like me to do?”).

364. FRAY ET AL., *supra* note 93, at 5; *see generally* Roffee, *supra* note 133, at 178-79 (“Loss of social status and community respect for the family is likely to follow as well as a pervasive social stigma.”); *see generally* Ramdass, *supra* note 283 (denouncing the “culture of hiding offenders”).

365. SANDRA BUTLER, CONSPIRACY OF SILENCE: THE TRAUMA OF INCEST 4 (1996).

366. *See* Bowman & Brundige, *supra* note 67, at 244 (pointing out that children are highly unlikely to disclose sexual abuse especially in cultures “where children are generally raised to be exceptionally deferential and obedient to older persons, especially males and specifically those males who have authority within their families.”); Jane F. Gilgun, *We Shared Something Special: The Moral Discourse of Incest Perpetrators*, 57 J. MARRIAGE & FAM. 265, 277 (1995).

367. Gilgun, *supra* note 367, at 277.

368. Bowman & Brundige, *supra* note 67, at 244.

The culture of silence and the Jamaican male entitlement culture, which undergirds a culture of victim blaming, work in tandem to make victims of intrafamilial sex abuse feel ignored, gaslit, powerless to report the abuse, guilty, and complicit in their abuse.³⁶⁹ To explain, research in Barbados, which may carry similar weight in Jamaica, revealed that “[a]dolescent victims of sexual abuse, especially intrafamilial abuse, were found not to be believed when they disclosed abuse and were more likely to be blamed for the abuse by teachers, clinicians, the judiciary and the general community.”³⁷⁰ Equally disappointing, the perpetrator, family, and community may blame the victim for causing, participating in, or wanting the abuse to happen, thus compounding the victim’s feeling of guilt, shame, powerlessness, and stifling any inclination to report the abuse.³⁷¹

The culture of silence tends to be even more oppressive to boy victims who are more likely to suppress rather than report the abuse.³⁷² On the one hand, boy victims may refuse to report sexual abuse if the perpetrator is male for fear that they are seen as homosexuals.³⁷³ On the other hand, the macho culture in Jamaica that fuel the practice of multiple female lovers and sexual initiation for boys at an early age, compel the boys to keep silent when the perpetrators are women for fear of appearing “soft.”³⁷⁴

Additionally, the culture of silence coupled with the “ethic of non-interference in the domestic affairs of others” often deter neighbors, other family members, and friends who know of the intrafamilial sexual abuse from reporting the abuse.³⁷⁵ They may fear being accused of “being ‘nosey,’ ‘interfering,’” or worse, that the “families and perceived ‘victims’ might deny the abuse and, instead, ‘turn against’ the ‘Good Samaritan’.”³⁷⁶

369. See Jeremiah et al., *supra* note 276, at 59.

370. JONES & JEMMOTT, ISSUES FOR BARBADOS, *supra* note 82, at 29 (noting also research conducted in Britain on attitudes among teachers and social workers to intrafamilial sexual abuse, particularly father-daughter rape, found both groups demonstrated a willingness to attribute blame to the child victim.); see CAPRI, *supra* note 108, at 35 (noting that when children speak out at intrafamilial child sexual abuse they are not believed.).

371. See Mondragon et al., *supra* note 147, at 3 (“The abuse is the secret that, according to the perpetrator, is shared with equal responsibility by the adult and the child.”).

372. See generally Gibson et al., *supra* note 77, at 116.

373. See CAPRI, *supra* note 108, at 33 (noting that if “the victim of sexual abuse was male the case would almost certainly not be reported.”); see generally Gibson et al., *supra* note 77, at 116 (victimization is suspected to be deeply shrouded in secrecy since homosexual activity in Jamaica, if revealed, is often met with mob violence.).

374. See NICK DAVIS & CULTURE SMART, JAMAICA - CULTURE SMART!: THE ESSENTIAL GUIDE TO CUSTOMS & CULTURE (2011) (detailing the macho culture in Jamaica).

375. La Fontaine, *supra* note 135, at 14.

376. JONES & JEMMOTT, ISSUES FOR BARBADOS, *supra* note 82, at 119.

Fear of physical harm also influences decisions not to report intrafamilial child sexual abuse. In Jamaica's "informer fi dead" culture, it is not uncommon for the perpetrator to use threats of violence to dissuade the victim, other family members, or anyone who knows of the abuse from reporting the abuse.³⁷⁷ Oddly enough, the perpetrator is sometimes joined by family and community members in using threats of violence to suppress reports of intrafamilial child sexual abuse.³⁷⁸

In Jamaica, the justice system has been a factor in the underreporting of child sexual abuse. While there are several recent improvements to the justice system in Jamaica, there is a general "lack of confidence in the system [which serves] as [a] disincentive[] to reporting abuse."³⁷⁹ Notably, victims and their families are overwhelmingly dissuaded from reporting intrafamilial sexual abuse largely because of the length of time it takes to schedule the case on the judicial calendar, the financial and emotional costs to the victim, the protracted delays,³⁸⁰ the lack of empathy to victims of child sexual abuse by some members of the judicial system,³⁸¹ and a fear that justice will be perverted allowing the perpetrator to influence the direction of reports, avoid punishment, or receive a proverbial slap on the wrist.³⁸² To foster a belief in the integrity of the justice system, and to further the goal of criminal law as

377. Samms & Cholewa, *supra* note 111, at 118 (noting that persons who may know of an incident of intrafamilial may "often keep silent for fear of being labeled an informant."); Haniff, *supra* note 126, at 365 (noting Jamaica's informer culture); Davies et al., *supra* note 359, at 10; *see* Devon Ricketts v. R [2021] JMCA Crim 20 [2].

378. *See* Gardner et al., *supra* note 108, at 9 (Also related, family and community members may sympathize with the perpetrator and blame the victim for reporting the sexual abuse.); *see also* Silvera, *Dad raped us*, *supra* note 363.

379. CHILD SEXUAL ABUSE EASTERN CARIBBEAN: PERCEPTIONS, *supra* note 85, at 22.

380. IT AFFECTS YOU FOR A LIFETIME, *supra* note 249, at 91 (noting that the systemic court delays deter victims from reporting child sexual abuse).

381. *See id.* (one of the factors that contributed to under-reporting and general help seeking intentions was the systemic challenges within the justice system and how CSA matters were handled. Participants suggested that first contact professionals such as the police, even those at the special unit in charge of child abuse cases, are not sensitive to cases of CSA, particularly with boys.); *see generally* Betsy Ann Lambert Peterson, *A Legal Perspective of Child Sexual Abuse in the Caribbean, with a Focus on Trinidad and Tobago*, in UNDERSTANDING CHILD SEXUAL ABUSE: PERSPECTIVES FROM THE CARIBBEAN 51, 70 (Adele D. Jones ed. 2013) (noting that "[M]any psychiatrists and those engaged in the assessment and treatment of abused children posit that the legal process is itself abusive and causes damage to the child witness.").

382. *See* Wilson-James, *supra* note 70, at 148-49 (arguing that "[B]ecause of the high percentage of perpetrators who escape prosecution, victims are unwilling to disclose the sexual abuse. The data also showed that perpetrators of sexual abuse are less likely to receive prison time compared to other criminals."); *see* JONES & JEMMOTT, ISSUES FOR BARBADOS, *supra* note 82, at 10 ("The perpetrator may be in a position of power or is likely to know someone who is and may be able to influence the outcome of a report.").

a deterrent, it is important that the child and others who know of the sexual abuse see that the perpetrator is punished.³⁸³

Intrafamilial child sexual abuse that is not disclosed is unlikely to be reported.³⁸⁴ It is important to understand that sometimes victims never disclose the abuse or they do so many months or years later because they do not know that the sexual contact is wrong and abusive, they do not have the vocabulary to describe the abuse, or they suppress memories of the abuse.³⁸⁵ For example, young children may not be aware that the sexual contact is wrong and if they are aware, they may not have the vocabulary to describe the abuse.³⁸⁶ Moreover, older children may only become aware that the sexual contact is wrong months or years later “when they have had the opportunity to talk to someone.”³⁸⁷ This opportunity is often nonexistent or significantly delayed because of the secrecy surrounding intrafamilial child sexual abuse.³⁸⁸ It is a common coping strategy for adult survivors of intrafamilial child sexual abuse to deny, minimize, or suppress memories of the abuse.³⁸⁹ Forgetting the abuse happened is also another common coping strategy.³⁹⁰ Approximately one third of adult victims of intrafamilial child sexual abuse cannot recall the abuse; in fact “the younger the child was at the time of the abuse, and the closer the relationship to the abuser, the more likely one is not to remember.”³⁹¹

383. JONES & JEMMOTT, ISSUES FOR BARBADOS, *supra* note 82, at 16 (noting that convictions for child sexual abuse are rare because of the many impediments to prosecution); Todres, *supra* note 66, at 99 (criminal law’s core goal is deterrence and punishing the perpetrator).

384. See Bowman & Brundige, *supra* note 67, at 244 (suggesting that even if the victims do not verbally disclose child sexual abuse, the abuse can nonetheless be detected through “physical symptoms, injuries, or behavioral changes.”); see also *id.* at 245 (“To address this problem requires educating caregivers and the community at large to recognize behavioral signs that a child has been sexually abused, to understand what constitutes child sexual abuse short of intercourse, and to respond sensitively”).

385. Mondragon et al., *supra* note 147, at 3 (noting that “many people who are victims of childhood sexual abuse do not disclose the abuse until many years later.”).

386. *Id.*; Jemmott, *supra* note 348, at 77.

387. See Bowman & Brundige, *supra* note 67, at 244 (noting that “societal taboos and silence about sexual matters also hamper older children from understanding and disclosing what has happened to them.”); see also Gilgun, *supra* note 373, at 273 (noting that a stepdaughter learned in school that the sexual abuse by her stepfather was wrong); see Chung, *supra* note 1, ¶ 13 (alleged victim learned from talking to her friends that sex with her father was wrong); see BUTLER, *supra* note 365, at 31 (child may take years to understand that sexual contact with father is wrong where the father’s behavior is non-violent).

388. Mondragon et al., *supra* note 147, at 3 (“Incest is an abusive act surrounded, supported, and enabled by secrecy.”).

389. JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 231 (noting that “the closer the relationship to the abuser, the more likely one is not to remember.”).

390. *Id.* at 230.

391. *Id.* at 231.

While the barriers to reporting intrafamilial child sexual abuse are many, the downsides of failing to report the abuse are even worse. To note, in instances where the abuse is not reported, the perpetrator typically goes unpunished and likely feels empowered to continue the abuse and sexually abuse other children in the household.³⁹² In fact, it is generally posited that “[o]ffenders do not stop until they are caught or there is an intervention,”³⁹³ which creates ample opportunity for the abuse to continue for years and happen to multiple children. Equally tragic, the child victim and others who may be aware of the abuse may feel frustrated and revictimized when they see that the perpetrator faces no consequences for the harm done. As such, it is important that the child sees that the perpetrator is held accountable for sexual abuse.

IV. JAMAICA’S INCEST LAW AND ITS LIMITATIONS

A. *Jamaica’s Incest Laws*

Jamaica has long shifted away from the traditional nuclear family consisting of mother, father, and biological children as the predominant family structure, yet the incest laws remain narrowly drawn to proscribe solely heterosexual sexual intercourse by close blood relatives. Until July 2011, incest in Jamaica was regulated under the Incest Punishment Act of 1948 (the Incest Act).³⁹⁴ As a former British colony, Jamaica’s incest laws are rooted in British Incest Laws.³⁹⁵ The Incest Act narrowly defined incest based on consanguinity and proscribed sexual intercourse between close lineal ancestors and descendants. The Incest Act applied equally to persons

392. Gardner et al., *supra* note 108, at 12; Jeremiah et al., *supra* note 276, at 58 (“When there is more than one daughter in the family, father will target the oldest, but he may abuse more than one, simultaneously, in private acts or in sequence as they grow.”); see Little-White, *supra* note 263 (“When there is more than one daughter in the family, father will target the oldest, but he may abuse more than one, simultaneously, in private acts or in sequence as they grow.”); see generally Wilson-Harris, *supra* note 363 (father abuses multiple siblings); see generally Silvera, *Dad raped us*, *supra* note 363 (father abuses multiple siblings for several years).

393. RAVEN L. BADGER, *SEXUALITY AND ADDICTION, MAKING CONNECTIONS, ENHANCING RECOVERY* 126 (2012); see Komalasari & Paraniti, *supra* note 208, at 235 (positing that “[c]onfidentiality of incest makes incest unknown to the surrounding environment. As a result, this violence can occur many times in a long period of time.”).

394. See Sexual Offences Act (The Sexual Offences Act came into effect on July 15, 2011, repealed the Incest (Punishment) Act, added certain provisions set out in the previous Offences Against the Person Act, and repealed Sections 44 to 67 of the Offences Against the Persons Act (1864)).

395. See Murray, *supra* note 168, at 105 n.7 (U.S. incest laws trace back to English ecclesiastical statute).

related by whole or half-blood.³⁹⁶ For example, the term “sister” under the Incest Act included half-sister and the term “brother” included half-brother.³⁹⁷ Knowledge of the familial relationship was an essential element to establishing incest.³⁹⁸ The offender had to know that the person with whom he or she had sexual relations was a close blood relative.³⁹⁹ For example, sexual intercourse between a male and a female who the male knew was his grand-daughter would be prohibited under the Incest Act.⁴⁰⁰ In this instance, the male could be charged with a misdemeanour punishable by up to five years in prison with hard labor.⁴⁰¹ Consent of the female was immaterial.⁴⁰² If the male had sexual intercourse with a female who at the time was under 12 years old, the punishment extended to up to 16 years of imprisonment with hard labor.⁴⁰³ Attempted incest carried a penalty of up to two years of imprisonment with hard labor.⁴⁰⁴

Females ages 16 and older could also be convicted of the crime of incest under The Incest Act. Specifically, the Incest Act proscribed sexual intercourse between females aged sixteen and above and their father, grandfather, brother, or son.⁴⁰⁵ Like with the males, knowledge of consanguineal ties was essential to establishing incest. However, unlike with males, consent was essential to proving incest by a female.⁴⁰⁶ The Incest Act explicitly stated that “[a]ny female person of or above the age of sixteen years who with *consent permits* her grand-father, father, brother, or son, to have carnal knowledge of her (knowing him to be her grand-father, father, brother, or son, as the case may be) shall be guilty of a misdemeanour . . .”⁴⁰⁷ Upon conviction, a female would face imprisonment with hard labor for a term of up to five years.⁴⁰⁸ Unlike with males, the Incest Act did not include a charge for attempted incest for females.⁴⁰⁹

396. Incest (Punishment) Act, § 4 (1948) (Jam.).

397. *Id.*

398. *Id.* at § 2.

399. *Id.*

400. *Id.*

401. *Id.*

402. *Id.*

403. *Id.*

404. *Id.*

405. *Id.* at § 3.

406. *Id.*

407. Incest (Punishment) Act, *supra* note 415.

408. *Id.*

409. *Id.*

Stakeholders implored the legislature to amend the Incest Punishment Act to give it “more teeth.”⁴¹⁰ Specifically, the stakeholders requested changes to the Incest Act to “create a single, gender-neutral incest offence by persons of 16 years and older, and broaden the scope of people who can be found guilty of the offence to include among others, aunts, and uncles, nephews, and nieces and people in *loco parentis* relationships (persons, not parents, in parental-type relationships with children.)”⁴¹¹ The stakeholders also requested “the re-classification of the offence of incest as a felony, with a maximum penalty of life imprisonment.”⁴¹²

The Incest Act was repealed by The Sexual Offences Act of 2009, which came into effect on July 15, 2011.⁴¹³ The Sexual Offences Act regulates incest and several other sexual offenses including rape, grievous sexual assault, sexual offences against children, and indecent assault.⁴¹⁴ The Sexual Offences Act expanded the scope of blood relatives who can be found criminally liable for incest to include grandmother, aunts, uncles, nieces, and nephews, and made incest a felony instead of a misdemeanor.⁴¹⁵ Under the Sexual Offences Act, the crime of incest is established when a male person “willingly has sexual intercourse with another person knowing that the other person is his grandmother,⁴¹⁶ mother, sister, daughter, aunt, niece or granddaughter” and when a female person “willingly has sexual intercourse with another knowing that the other person is her grandfather, father, brother, son, uncle, nephew or grandson.”⁴¹⁷ Like the Incest Act, the Sexual Offences Act makes no distinction between persons related by whole blood or half blood.⁴¹⁸ Culpability for incest would apply to a man who has sexual intercourse with his sister or his half-sister.

Additionally, The Sexual Offences Act removed consent as an element of incest by adult females.⁴¹⁹ Consent is now immaterial to establishing criminal liability for incest.⁴²⁰ This means that consent cannot be used as a

410. Alicia Dunkley, *Smith says Incest Punishment Act Needs ‘More Teeth,’* JAM. OBSERVER (Dec. 15, 2006), <https://www.jamaicaobserver.com/2006/12/14/smith-says-incest-punishment-act-needs-more-teeth/>.

411. *Id.*

412. *Id.*

413. Sexual Offences Act, §§ 1–44 (2009) (Jam.) (amending the Offences Against the Person Act (1864)).

414. *Id.*

415. *Id.* at § 7.

416. *Id.*

417. *Id.*

418. *Id.*

419. *Id.*

420. *Id.*

defense to a charge of incest.⁴²¹ Sexual intercourse between blood relatives within the statutorily defined degree of consanguinity equates to incest irrespective of whether both parties gave consent. Interestingly, drafters of the Sexual Offences Act made it clear that incest was not a strict liability crime.⁴²² Instead, the drafters added “willingly [had] sexual intercourse” to explicitly indicate that the crime of incest cannot stand against the accused unless he or she consciously, voluntarily, and intentionally had sexual intercourse with a person within the prohibited degree of consanguinity.⁴²³

Answering the concerns of the stakeholder, The Sexual Offences Act includes higher penalties for incest, now reclassified from a misdemeanor to a felony.⁴²⁴ As a result, any male or female found guilty of incest could be sentenced up to life in prison.⁴²⁵ Unlike with its predecessor, the Incest Act, females can be found guilty of attempted incest under the Sexual Offences Act.⁴²⁶ And, both males and females who are found guilty of attempted incest can face a punishment of up to ten years of imprisonment.⁴²⁷

Children under sixteen years old and persons with a mental disorder at any age may be removed from the custody and control of a blood-related or non-blood-related sexual abuser. The Sexual Offences Act gives the court discretion to divest a convicted person of authority or guardianship;⁴²⁸ appoint a guardian; or refer the matter of guardianship to the Children’s Court for further proceedings.⁴²⁹

Part IV of the Sexual Offences Act contains several provisions that proscribe sexual contact with children. For purposes of these provisions, a child is defined as a person under the age of 16 years.⁴³⁰ The Sexual Offences Act explicitly proscribes sexual touching or interference of a person under 16 years,⁴³¹ sexual grooming of a person under 16 years,⁴³² sexual intercourse with a person under sixteen,⁴³³ and inducing or encouraging violation of a child under 16 years by an owner or occupier of a premises.⁴³⁴ The Sexual

421. *Id.*

422. *Id.*

423. *Id.*

424. *Id.*

425. *Id.*

426. *Id.*

427. *Id.*

428. *Id.* at § 8.

429. *Id.* at § 7.

430. *Id.* at § 8.

431. *Id.*

432. *Id.* at § 9.

433. *Id.* at § 10.

434. *Id.* at § 11.

Offences Act also empowers the court to divest the parents or guardians of custody of a child under 16 years if it has been proven at trial that the parents or guardians have “caused, encouraged, or favoured” seduction or prostitution of the child.⁴³⁵ The Sexual Offences Act includes a sex offenders registry.⁴³⁶

B. Limitations to the Incest Provision of the Sexual Offences Act

Under the Sexual Offences Act, the crime of incest remains limited to people with consanguineal relationships.⁴³⁷ Stepparents, adoptive parents, foster parents, persons acting in *loco parentis* to a child, a parent or guardian’s boyfriend living in the same household as the child, cannot be found criminally liable for incest under the Sexual Offences Act.⁴³⁸ At best, a stepparent, adoptive parent, foster parent, person acting in *loco parentis* to a child, parent, or guardian’s boyfriend living in the same household as the child, or other “adult in authority” who has sexual intercourse with a child under the age of 16 years may be charged with the offense of having sexual intercourse with a person under the age of 16 years.⁴³⁹ An adult in authority is defined under the statute as: a position of trust or authority in relation to a child; a person with whom a child is in a relationship of dependency; or a person who stands in *loco parentis* to a child.⁴⁴⁰

If “an adult in authority” is convicted of sexual intercourse with a child under the age of 16, he or she may be sentenced to “imprisonment for life, or such other term as the Court considers appropriate,” which should be no less than 15 years.⁴⁴¹ The convicted person may be eligible for parole only after serving 10 years of imprisonment. Like persons convicted of incest who have authority or guardianship of the child victim, the Court may divest the “adult in authority” of authority or guardianship of the child.⁴⁴² Consent of the child under the age of 16 is immaterial to imposing criminal liability.⁴⁴³ It is important to point out that persons over the age of 16 are unable to benefit from this provision.

By contrast, consent becomes material to invoking criminal liability, if a stepfather, adoptive father, foster father, mother’s or guardian’s boyfriend,

435. *Id.* at § 12.

436. *Id.* at § 29.

437. *Id.* at § 7.

438. *Id.*

439. *Id.* at § 10.

440. *Id.*

441. *Id.*

442. *Id.*

443. *Id.*

or other male adult in authority has sexual intercourse with a female over the age of 16 years.⁴⁴⁴ The adult male may be charged with rape. Under the Sexual Offence Act, “[a] man commits the offence of rape if he has sexual intercourse with a woman (a) without the woman’s consent; and (b) knowing that the woman does not consent to sexual intercourse or recklessly not caring whether the woman consents or not.”⁴⁴⁵ Consent is vitiated only in the limited instances of physical assault or fear of physical assault to the victim or a third person and fraud.⁴⁴⁶ The Court has discretion in sentencing a person convicted of rape to 15 years to life imprisonment.⁴⁴⁷

Incest is a crime under the Sexual Offences Act only where the sexual intercourse is between a male and a female.⁴⁴⁸ Put another way, the Sexual Offences Act only proscribes heterosexual incest. Sexual intercourse is material to establishing incest. The Sexual Offences Act explicitly defines sexual intercourse as “the penetration of the vagina of one person by the penis of another person.”⁴⁴⁹ Sexual touching, including oral, anal, and digital penetration will not meet the threshold to establish incest.⁴⁵⁰ Consequently, homosexual sexual penetration, male to male or female to female, will not qualify as criminal incest under the Sexual Offences Act.⁴⁵¹ Homosexual sexual penetration by a close blood relative or an adult in authority may be prosecuted under grievous sexual assault.⁴⁵² Grievous sexual assault requires proof that the offender penetrates or causes another person to penetrate the vagina or anus of the victim by a body part other than the penis of the offender or the other person or an object manipulated by the offender or the other person; the offender places his penis or causes another to place his penis into the mouth of the victim; or the offender places his or her mouth or causes another person to place his or her mouth onto the vagina, vulva, penis or anus of the victim. Consent is material in establishing grievous sexual assault.⁴⁵³ Like rape, the Sexual Offences Act requires that the acts are carried out without consent of the victim; and knowing that the victim does not consent to the act or recklessly not caring whether the victim consents or not.⁴⁵⁴

444. *Id.*

445. *Id.* at § 3.

446. *Id.*

447. *Id.* at § 6.

448. *Id.* at § 7.

449. *Id.* at § 2.

450. *Id.*

451. *Id.* at § 3.

452. *Id.* at § 4.

453. *Id.*

454. *Id.*

Again, like rape, consent is vitiated only in the limited instances of physical assault or fear of physical assault to the victim or a third person, and fraud.⁴⁵⁵

C. *Current Incest Protections Fall Short of International Standards*

Replacing the Incest Act with the Sexual Offences Act of 2009 shows the Jamaican government is serious about protecting children from sexual abuse, but there is still room for improvement. The Sexual Offences Act needs more “teeth” as it fails to adequately protect all children, male and female, equally from intrafamilial child sexual abuse. In short, current incest protections, albeit a step in the right direction, fall short of international standards, particularly the international mandate under the United Nations Convention on the Rights of the Child (CRC).

International standards require that all children are protected from sexual abuse regardless of sex or gender. The CRC defines a child as “any human being under the age of 18.”⁴⁵⁶ Taking guidance from the CRC, the World Health Organization also defines a child as a person under the age of 18.⁴⁵⁷ Article 19 of the CRC, ratified by several countries, including Jamaica, requires all state parties to take all appropriate measures, including legislative measures, to “protect the child from all forms of physical or mental violence, injury, or abuse ... including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”⁴⁵⁸ Article 27 further recognizes “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”⁴⁵⁹ Article 34 obliges state parties to “protect the child from all forms of sexual exploitation and sexual abuse.”⁴⁶⁰ In addition, Jamaica is also signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which prohibits sexual violence against girls and women.⁴⁶¹ Sexual violence against girls and women is a form of discrimination explicitly prohibited by CEDAW.⁴⁶² CEDAW requires State

455. *Id.* at § 3.

456. *Convention on the Rights of the Child*, adopted Nov. 20, 1989, G.A. Res. 44/25, 1 U.N. GAOR Supp. (No. 49), U.N. Doc. A/44/49 (1989), (entered into force Sept. 2, 1990) [hereinafter *Convention*].

457. World Health Organization [WHO] *Report of the Consultation on Child Abuse Prevention*, at 14, (29-31 Mar., 1999).

458. *Convention*, *supra* note 456, at art. 19.

459. *Id.* at art. 27.

460. *Id.* at art. 34.

461. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, (entered into force Sept. 3, 1981) art. 1& 2 [hereinafter CEDAW].

462. *Id.*

Parties “[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”⁴⁶³ Put another way, the State Parties must take all appropriate measures, including amending legislation, to “prevent, respond to, protect against, and provide remedies for child sexual abuse within the family.”⁴⁶⁴

It is globally understood that international standards require that “[c]hildren have a right to safety and security in their homes and communities.”⁴⁶⁵ Yet, the family and household which are important bases for socialization of children are oftentimes where children face most harm, and in particular sexual violence.⁴⁶⁶ In the 1988 article *The Politics of Child Sexual Abuse: Notes From American History*, Professor Linda Gordon states that for sexually abused children “the most dangerous place for [the child] is the home, [and] the most likely assailant [is] their father.”⁴⁶⁷ Over three decades later, this statement remains true and relevant globally and locally. The change in the family structure from a traditional nuclear family to a predominantly single-parent headed household in Jamaica with other existing family structures such as a reconstituted, blended, or cohabiting family structure means that the definition of the most likely assailant has expanded from a biological father to include a permanent or transient step-father, adopted father, a mother’s or guardian’s partner, or another adult male in the household.

The incest provision of the Sexual Offences Act fails to meet international standards because one of the goals of incest law is to protect children from sexual abuse in their homes and at the hands of relatives and persons who have power and control over them, yet the incest provision does not fully take into consideration Jamaica’s diversity in family structure and the increased vulnerability of children to persons who are living in their household who may not be blood relatives. Because of the prominence of the single-female headed household and reconstituted families in Jamaica, the incest provision of the Sexual Offences Act should extend beyond close blood relatives to include relationships by co-habitation and affinity. This includes stepfathers, adopted fathers, mother’s or guardian’s boyfriends, fathers who are raising a non-biologically related child as in the case of

463. *Id.* at art. 2.

464. Bowman & Brundige, *supra* note 67, at 264.

465. Davies et al., *supra* note 359, at 28.

466. Bowman & Brundige, *supra* note 67, at 264 (“The Committee on the Rights of the Child, which monitors compliance with the CRC, has recognize[d] that much of the violence experienced by children, including sexual abuse, takes place within a family context”).

467. Linda Gordon, *The Politics of Child Sexual Abuse: Notes from American History*, 28 FEMINIST REV. 56, 61 (1988).

surrogacy or sperm donation, and cohabiting men who exercise power and control over the children.

Currently, and as a stark example, sexual intercourse between a stepdaughter and her stepfather is not prohibited under the incest provision of the Sexual Offences Act even where the parents are legally married or are in a long-term common-law relationship.⁴⁶⁸ The same holds true for a daughter and her adopted father. Affinity relationships of any kind, whether legal or by association, are not included in the incest provision.⁴⁶⁹ A stepfather who has sexual intercourse with his stepdaughter may be charged with Sexual Intercourse with a Person under 16 years old if the stepdaughter is under 16 years old at the time or with the offense or rape if the stepdaughter is 16 years old or older.⁴⁷⁰ Similarly, in situations of misattributed paternity, even where the perpetrator has raised the child from birth and the child lives in the same household, the incest provision of the Sexual Offences Act does not apply because consanguinity cannot be established.

To illustrate the issue, imagine that Ann's biological father died when she was two years old. Ann's mother married Tom when Ann was four years old. Tom and Ann's mother had two other children; girls named Isla and Martha. They all lived in the same household. Tom is the only father Ann knows. She calls him dad. Tom started to fondle Ann when she turned 12 years old. He had sexual intercourse with her for the first time the month after her sixteenth birthday and frequently thereafter. Similarly, Tom started to fondle Isla and Martha when they turned 12 years old, and he started to have sexual intercourse with them the month after they turned 16 years old. Isla told her guidance counselor at school that her father was touching her, and the principal reported it to the police. Upon investigation by the police, it was discovered that Tom was also sexually abusing Martha. Tom immediately got a lawyer who advised him to get a DNA test. The DNA test showed that Isla was not Tom's biological child. Martha, who was born eleven months after Isla was Tom's biological child. Tom was charged with incest under the Sexual Offences Act only in relation to Martha who was his biological child. As for Ann and Isla, he could not be held criminally responsible for incest under the Sexual Offences Act because he was not their close blood relative. Even though Tom had raised all three girls as his children, and Isla and

468. See Sexual Offences Act § 7.

469. *Id.* at §§ 7-15.

470. A stepfather may be found to be an "adult in authority" which allows for a sentence of life imprisonment upon conviction, but this only applies if the child is under 16 years of age. Sexual Offences Act, §§ 6, 10; see *Stephen Collins v. R* [2016] JMCA Crim 17 (Mr. Collins was found to be an adult in authority and charged with having Sexual Intercourse with a Person under 16 years old. He was the victim's 59-year-old stepfather).

Martha practically as twins given that they are only 11 months apart, Tom could only be found guilty of incest for sexually abusing Martha, his biological child.

Under the Sexual Offences Act, Tom could be charged for lesser offenses such as sexual touching in relation to Isla and Ann for the sexual abuse they endured up to the age of sixteen years old. Since Tom started to have sexual intercourse with them when they were a month over sixteen years old, he could be charged with rape but would be found guilty only if consent was not proven in both cases. Under the Sexual Offences Act, Tom would have committed no offense if he had consensual sexual intercourse with his daughters Isla and Ann. In Isla's situation, where paternity was misattributed, it would be interesting if the courts were to rule as the Court of Appeals in California did in *People v. Russell*,⁴⁷¹ that because Isla's mother was married to and cohabitating with her husband Tom at the time of Isla's birth, she was to be considered his daughter for purposes of the statute.⁴⁷²

In another scenario, Elsa, her mother, older brother, younger sister, and Jake lived in the same house. Elsa's mother and Jake were not married but were in a long-term relationship and she was Jake's common-law wife. They were the biological parents of Elsa's younger sister. Elsa and her brother called Jake "Uncle Jake." Jake owned the house the family lived in and was the primary breadwinner. They lived as a family. Jake began to sexually touch and digitally penetrate Elsa the month after she moved into his house. She was five years old. Elsa, Jake, and her younger sister were alone at home. Her sister was asleep. Elsa went to use the bathroom. Jake approached Elsa, pulled her shorts and underwear down and rubbed his penis on her vagina. He then inserted his penis into her vagina. She was thirteen years old at the time. Jake gave Elsa \$500 to keep her quiet and not tell anyone what had happened. She ran away from home the next day. Like Tom, Jake could not be held criminally responsible under the Sexual Offences Act for incest because Elsa is not related to him by blood. Although Elsa and her siblings live with Jake and their biological mother, Jake provides for them financially and they call him "Uncle," which shows a sign of respect and signals that he is a part of the family, Elsa is still not his biological daughter, granddaughter, or niece.⁴⁷³ Because Elsa is under the age of sixteen, Jake could be charged with having Sexual Intercourse With a Person under Sixteen. Based on precedent, he could be found to be an adult in authority, which carries a penalty of "imprisonment for life, or such other term as the Court considers

471. *People v. Russell*, 22 Cal. App. 3d 330 (1971) as mentioned in Murray, *supra* note 168, at 107.

472. Murray, *supra* note 168, at 107.

473. See Sexual Offences Act, § 7.

appropriate, not being less than fifteen years.”⁴⁷⁴ If Elsa were Jake’s biological child, he could have been charged with incest for having sexual intercourse with her regardless of her age.

The failure of the incest provision of the Sexual Offences Act to include non-biological “parents” and family within the household makes the age of the victim even more crucial in determining criminal liability for intrafamilial child sexual abuse. The age of the victim is immaterial under the incest provision of the Sexual Offences Act.⁴⁷⁵ A perpetrator who has sexual relations with a statutorily defined closely related person can be found criminally responsible for incest irrespective of the victim’s age.⁴⁷⁶ If the victim is considered the perpetrator’s child, foster child, or stepchild, or lives in the same household but is not within the statutorily defined group of close blood relatives, age becomes crucial in determining criminal responsibility. Although the CRC and the WHO define a child as “a person under the age of eighteen,” part IV of the Sexual Offences Act, which explicitly addresses Sexual Offences Against Children and Indecent Assault, defines a child as “a person under the age of sixteen.”⁴⁷⁷ To that end, as with incest, consent is immaterial to establishing a charge for Sexual Intercourse With a Person under Sixteen but material to establishing rape – the charge that would apply when the victim is sixteen years old and older.

It is critical to note that even if Elsa were Jake’s biological child, while he could be charged for incest for having sexual intercourse with her, the years he spent sexually touching and digitally penetrating her would not carry a charge of incest because incest under the Sexual Offences Act requires proof of sexual intercourse. Consequently, other forms of harmful and abusive sexual contact not limited to sexual touching; or digital, anal, or oral penetration, cannot establish criminal liability for incest.

The incest provision of the Sexual Offences Act falls short of international standards because it discriminates based on sex. This is because the Sexual Offences Act limits criminal responsibility for incest to heterosexual sexual intercourse same-sex sexual contact would not be proscribed as incest and may warrant a lesser penalty.⁴⁷⁸ For example, while harmful to the child, mother-daughter sexual contact would not qualify as incest. Similarly, father-son or grandfather-son sexual contact would not be proscribed as incest under the Act.

474. *Id.* at § 10; *see* Stephen Collins v R [2016] JMCA Crim 17.

475. *Id.* at § 7.

476. *Id.*

477. *Id.* at §§ 2, 10.

478. *Id.* at § 7.

Boys are not protected even in situations where a similarly situated girl would have been protected under the incest provision. To explain, a man can be charged for incest if he has sexual intercourse with his biological daughter, but he cannot be charged for incest for any type of sexual penetration with his son because sexual intercourse is a material element in the crime of incest and sexual intercourse can only be established in heterosexual contacts – “the penetration of the vagina of one person by the penis of another person.”⁴⁷⁹ In yet another scenario, after a brief illness, Judith lost her husband and the father of their charming three-year old son Nate. Three years later, Judith married Bob, a widow. Bob had a son, Theo, who was two years older than Nate. Together, Bob, Judith, Nate, and Theo settled into their happy blended family. Five years into the marriage, Judith got a promotion and started traveling frequently for work. She noticed that Nate had become withdrawn while Theo was overly aggressive. Judith attributed their behavior to the “relentless” pre-teen years. When she took the boys to the doctor for their annual physical exam, her worst nightmare came true. Bob was sexually abusing both boys. Under the Sexual Offences Act, the crime of incest is limited to heterosexual sexual contact by close blood relatives.⁴⁸⁰ Bob could not be charged with incest in either scenario. Although Bob was Theo’s biological father, Bob is male and so is Theo. The criminal prohibition against incest proscribes only vaginal penetration.⁴⁸¹ If Theo had been a girl, Bob could have been charged with incest which carries an automatic starting point of life imprisonment. Similarly, although Nate was not Bob’s biological child, if Nate were a girl, Bob could not be charged with incest but he could have been charged with Sexual Intercourse with a Person Under Sixteen which does not require proof of consent and which carries a penalty of no less than fifteen years to life imprisonment.⁴⁸² However, since both Nate and Theo are boys under the age of sixteen, Bob can be charged with grievous sexual assault⁴⁸³ and a lesser offense of sexual touching or sexual interference.⁴⁸⁴ Like Bob, family members or people in *loco parentis* can be charged with grievous sexual assault, under section 4 of the Sexual Offences Act, where they engage in or cause another to engage in penile or non-penile penetration of a victim that is not sexual intercourse.⁴⁸⁵ Unlike incest, consent

479. *Id.* at § 2.480. *Id.* at § 7.481. *Id.* at § 2.482. *Id.* at § 10.483. *Id.* at § 4.484. *Id.* at § 8.485. *Id.* at § 4.

is material to the charge except in instances involving children sixteen years old and younger.⁴⁸⁶

In the above scenario, it is also likely that Bob could be charged for unnatural crime under section 76 the Offences Against a Person Act.⁴⁸⁷ Comparatively, section 76 criminalizes homosexuality and by its very wording revictimizes the victim by first calling the offense “unnatural” and second by labeling the crime as “the abominable crime of buggery.”⁴⁸⁸ If convicted, unlike incest which is a felony and carries a life sentence, an unnatural crime is misdemeanor⁴⁸⁹ that carries a sentence of up to ten years of imprisonment.⁴⁹⁰ That said, based on the labeling and the stigma attached, it is unlikely that a male victim of same sex intrafamilial sexual abuse would report the abuse and risk being stigmatized.⁴⁹¹

V. HOW LEGAL PROTECTIONS AGAINST INCEST CAN BE BETTER

Several scholars have looked at the variations in incest laws among jurisdictions and opined on ways to change the laws to provide greater protection for child victims of sexual abuse. Most notably, scholars have observed that the contemporary expansive definition of family necessitates a change in the definition of incest to reflect this change in societal family structure.⁴⁹² The family is no longer a nuclear construct consisting of closely related people with consanguineal ties. The family in Jamaica and elsewhere now typically includes people by affinity and cohabitation. This change in the family structure, however, has increased the proximity and vulnerability of children who are exposed to people who exercise power and control over them and on whom the children are dependent, but who may not see them as blood relatives.

Scholars seem to typically agree that laws proscribing incest solely on sexual intercourse with close linear ascendants and descendants, as is the case

486. *Id.*

487. Offences Against the Person Act, ¶ 76.

488. *Id.*

489. *Id.* (Buggery under the Offences Against the Person Act is a misdemeanour punishable for up to ten years imprisonment; attempted buggery is punishable for up to seven years imprisonment).

490. *Id.*

491. See Coleman, *supra* note 66, at 280-81 (“Current incest legislation fails to protect child victims in one additional respect. Many incest statutes prohibit only heterosexual activity. While the overwhelming majority of offenders are adult males and the majority of victims are female children, at least some men engage in sexual contact with male children. This deficiency in the statutes is particularly distressing because, whereas girls seem able, with competent professional help, to learn to cope with many of the psychological problems caused by incestuous behavior, boys may experience psychotic breaks.”).

492. See generally Mahoney, *Legal Definition of the Stepfamily*, *supra* note 164, at 30, 36.

with most traditional incest laws, do not adequately consider the diversity of the modern family structure nor serve the overall goals of the incest taboo, which includes protecting the institution of family from [jealous, discord, resentment] ensuring “harmony and stability” in the family⁴⁹³ and protecting children,⁴⁹⁴ particularly in light of the power imbalance that typically exists in parent-child relationships in the home.

Recognizing that a substantial number of children are sexually abused within the home, scholars have repeatedly argued that incest laws need to extend their limited reach beyond the traditional nuclear family consisting primarily of persons related solely by blood to consider the modern family and its diversity of forms which include affinity and cohabitating relationships.⁴⁹⁵ At the heart of these arguments is the vulnerability of the children, the power imbalance between parents or people acting in *loco parentis* and the children, and protecting the family institution from cracks caused by jealousy and discord.⁴⁹⁶ Professor Margaret Mahoney examined how stepparent-child relationships are treated under U.S. state laws regulating incest and observed that state incest laws that expressly exclude step-relatives, and by extension people related by affinity on the grounds that some people related by affinity should be allowed to marry, broadly look at stepfamily relationships as a monolith and ignore clear justifications for the incest ban.⁴⁹⁷ Mahoney further observed that states that strictly adhere to traditional incest laws and prohibit “sexual activity between close relatives without regard to the age” of the parties typically excluded stepfamily members but “[s]tepparent-child relationships are included in almost all of the laws that combine age and family relationship.”⁴⁹⁸ Regarding the latter state laws, Mahoney noted that “[t]he factors employed in these state statutes are designed to identify situations where a power imbalance exists in the family, similar to the authority exercised by parents over their children.”⁴⁹⁹ Typically, in these instances, the prohibition is lifted when the child reaches the age of majority.

Mahoney noted that some citizens may argue that including stepfamily members in incest laws limits “the freedom of adults to select sexual partners outside the biologic family,” however, numerous policy interests support

493. *Id.* at 30, 34.

494. *See id.* at 30.

495. *Id.*

496. *Id.* at 29, 31.

497. *Id.* at 30.

498. *Id.* at 31.

499. *Id.*

including stepchildren without limitation on age.⁵⁰⁰ “First, the vulnerability of stepchildren in the family may continue beyond their age of majority, thereby justifying the ban on adult relationships.”⁵⁰¹ “Second, stability and harmony in the stepfamily may be enhanced by the restriction on sexual relationships between consenting adults. Last, the broad application of criminal prohibitions on sexual activity without regard to age may, in fact, vindicate the views of the community, past and present, regarding moral behavior in the stepfamily.”⁵⁰² Mahoney notes that “a relationship even when the stepdaughter is at the age of majority could likely cause discord in the family.”⁵⁰³ In short, quoting *Rhodes v. McAfee*, Mahoney posited that where a “stepdaughter lived in the home with the mother and stepfather . . . [and her] status in this family would be closely akin to the natural children of a mother and stepfather . . . If there were no statutes prohibiting such marriages, there likely would [be] discord and disharmony in the family.”⁵⁰⁴ Mahoney argues that if the stepparent exercises a true parental role in the child’s life, the sexual encounter is more likely to be deemed incestuous than if the stepparent did not play a parental role.⁵⁰⁵

Adopting a similar line of reasoning, Professor Cynthia Godsoe argues that to “effectively deter and punish the harm” from incest, the scope of incest laws should be expanded to include stepfathers, stepmothers, “and others in a parental relationship” with the child.⁵⁰⁶ Godsoe posits that “criminal law in the relational context imposes a hierarchy among families,”⁵⁰⁷ favoring the traditional nuclear family. Consequently, “[t]he scope of liability perpetuates a biocentric, gendered, and heteronormative family, while leaving other families unrecognized . . .”⁵⁰⁸ In particular, the laws typically exclude “non-biological adoptive parents, stepparents, and functional parents,”⁵⁰⁹ and some states persistently fail to criminalize same-sex adult incest.⁵¹⁰ On this observation, Godsoe aptly noted that considering the “significance of the parent-child relationship in determining certain types of harm” criminal law

500. *Id.* at 32.

501. *Id.*

502. *Id.*

503. *Id.* at 33-34

504. *Id.* (citing to *Rhodes v. McAfee*, 457 S.W.2d 522, 524 (Tenn. 1970)).

505. Mahoney, *Legal Definition of the Stepfamily*, *supra* note 164, at 23-24.

506. Godsoe, *supra* note 305, at 202, 216, 225; *see also id.* at 221 (“[V]ertical incest should be expanded to include functional parents and other relatives (such as step-uncles) a generation older.”).

507. *Id.* at 200.

508. *Id.*

509. *Id.*

510. *Id.*

has failed to adopt key “changes in family law doctrine recognizing functional parenthood.”⁵¹¹

Godsoe posits that power imbalance is critical in assessing liability in relational crimes. Godsoe supports the ongoing criminalization of vertical incest in large part because of the power imbalance that typically exists in vertical familial relationships.⁵¹² Godsoe notes that “the parent-child relationship constitutes perhaps the ultimate power imbalance” yet some “states continue to very narrowly define parenthood” based solely “on formal [traditional] rather than functional definitions.”⁵¹³ This practice “leaves a large swath of persons unprotected from exploitation by stepfathers and others who have served as parents.”⁵¹⁴ Confirming global findings, Godsoe agrees that stepfathers are “some of the most common offenders” of intrafamilial sexual abuse.⁵¹⁵ Godsoe defines stepfather as “a parental figure whose parentage is not necessarily legally established via adoption or even marriage to a child’s mother, but rather comes through his romantic relationship with a child’s mother.”⁵¹⁶

Godsoe notes that “the majority of [contemporary] American households are “non-traditional,” meaning unmarried, cohabitating, or single parent households.⁵¹⁷ To that end, “non-marital, adoptive, same-sex, and functional (including step) families”⁵¹⁸ deserve greater recognition which “is particularly important in the parenthood context, given children’s inherent dependence, both financial and physical.”⁵¹⁹ Overall, Godsoe notes that “[e]xpanding definitions of parenthood [to] incorporate functional as well as formal family statuses, permitting the capture of power dynamics, [are] essential to truly parsing out relational crimes.”⁵²⁰

Importantly, Godsoe argues that the power imbalance inherent in the “parent-child dyad” vitiates valid consent.⁵²¹ Godsoe further argues that the power imbalance in parent-child relationships does not automatically end when the child becomes an adult.⁵²² In fact, Godsoe notes that “[P]arental

511. *Id.* at 182.

512. *Id.* at 216 (arguing that “horizontal incest should be decriminalized.”).

513. *Id.* at 197.

514. *Id.*

515. *Id.* at 202.

516. *Id.*

517. *Id.* at 208.

518. *Id.*

519. *Id.*

520. *Id.*

521. *Id.* at 173, 175.

522. *Id.* at 175.

authority does not suddenly dissipate when children turn eighteen; instead, the relationship remains inherently unequal.”⁵²³

Equally importantly, Godsoe posits that:

The criminal law has also long recognized the impossibility of consent with authority figures such as police officers and mental health professionals. The analysis of consent through this exploitation lens is being applied in new contexts, such as trafficking and sexual assault by coercion or exploitation. The failure to apply it within the family-the site of archetypal power imbalances - leaves harm unpunished and perpetuates a traditional family model with a gendered and heteronormative hierarchy baked in.⁵²⁴

In a similar vein, Tatjana Hörnle notes that traditional limitations based solely on sexual intercourse with near blood relatives is blindly anchored in eugenics which “does not survive critical scrutiny.”⁵²⁵ Along those lines, incest laws based solely on consanguinity may be too narrow to reach perpetrators within the home with whom the child has a social but not a biological parent-child relationship, such as stepfathers, but so broad that they reach persons who have had no previous relationship with the child or adult – for example, a sperm donor who neither he nor the female knew he is her biological father.⁵²⁶ Hörnle argues that a critical barometer should be whether a biological or social parent-child relationship exists or existed or “whether the common past has been shaped by extraordinary dependence and submission of the younger one.”⁵²⁷ In exploring the argument that incest laws should not be so broadly construed that it prevents consenting adults from having sexual relations, Hörnle posits that consent should be carefully defined.⁵²⁸ Hörnle contends that a clear distinction must be made between factual consent and valid consent particularly in instances of biological or social parent-child relationships because of the power imbalance in such relationships or other familial relationships where a power imbalance exists.⁵²⁹ Hörnle defines factual consent in a sexual context as an explicit or implicit indication by a person that they do not object to the sexual act.⁵³⁰ Hörnle contends that factual consent is insufficient in intrafamilial sexual acts, in that, even if both parties agree to the sexual act, that fact does not change the sexual act from being criminally or morally wrong.⁵³¹ In instances

523. *Id.*

524. *Id.* at 176.

525. *See* Hörnle, *supra* note 159, at 97.

526. *Id.* at 92.

527. *Id.*

528. *Id.* at 86.

529. *Id.*

530. *Id.*

531. *Id.*

of intrafamilial sexual encounters, consent has to be valid.⁵³² Valid consent requires personal competence.⁵³³ Looking at the German statute, Hörnle further contends that while juveniles, defined as ages fourteen to eighteen, may be able to give valid consent in certain instances,⁵³⁴ it is highly unlikely that they are able to give valid consent when the sexual partner is a “parent, sibling, or another close relative”⁵³⁵ largely because of the dependencies and power dynamics in biological and social family relationships.⁵³⁶ Hörnle observed that most modern criminal statutes define “sexual offense” to include “adults in situations without explicit coercion”⁵³⁷ for example “corrections officers and police officers commit a sexual offense if they have sex with an inmate or a suspect in a criminal investigation” irrespective of whether the prisoner or suspect approved or disapproved of the sexual encounter,⁵³⁸ because “under such extreme circumstances of dependence, even explicit factual consent does not count as voluntarily given.”⁵³⁹ Hörnle notes that a “[s]imilar reasoning applies to parent-child relationships.”⁵⁴⁰ In fact, Hörnle suggests factors that are important in determining if consent is valid: “the intensity of the parent-child relationship, its features of essential inequalities and dependences, and the time factor, that is, a long practice that has inescapably ingrained these structures into the relationship over many years.”⁵⁴¹ Interestingly, and as Hörnle points out, “if two formerly unequal persons interact again at later stages in their lives, it might be possible to transcend the status quo and to restructure the relationship, but this is unlikely if the relationship is one between parent and child.”⁵⁴² To that end, “the ‘child’s ‘D’ consent should be evaluated as deficient even if the child is now legally an adult.”⁵⁴³ Hörnle surmises that “[t]he social conditions within families, the pronounced and persistent conditions of dependence and inequality experienced by the younger family member in her or his relation to parents and siblings, can interfere with the personal competence that is

532. *Id.*

533. *Id.* at 87.

534. *Id.* at 88.

535. *Id.*; see Godsoe, *supra* note 305, at 175 (“Parental authority does not suddenly dissipate when children turn eighteen; instead, the relationship remains inherently unequal.”).

536. Hörnle, *supra* note 159, at 88.

537. *Id.* at 91.

538. *Id.*

539. *Id.*

540. *Id.* (note again, this is seen as a social relation; it does not matter if parenthood is biological).

541. *Id.*

542. *Id.* at 91-92.

543. *Id.* at 92.

necessary to give valid consent.”⁵⁴⁴ Consequently, “[e]ven if both partners are over age at the time of the sexual encounter, but one partner is aware of the other’s high degree of dependence and personal vulnerability, a moral demand to abstain from sexual intimacy can be defended.”⁵⁴⁵ On this line, Hörnle strongly suggests that these “reasons support a general moral rule that social parents should never seek sexual contacts with their children even if the children are legal adults.”⁵⁴⁶

Scholars have also argued that incest laws criminalizing sexual intercourse defined solely as penile-vaginal penetration are underinclusive and fundamentally unfair as they do not treat same-sex violations equally.⁵⁴⁷ Looking at Scottish incest laws which only “criminalises penile-vaginal penetration between two people within the specified degrees of relationship,”⁵⁴⁸ James Roffee argues, that by exclusively protecting penile-vaginal penetration “protection provided by the offence of incest is unavailable to all males and those females who are orally or anally violated.”⁵⁴⁹ In short, incest laws that choose to criminalize only penile-vaginal penetration “do [not] account for the equally pernicious harm caused by oral or anal sexual penetration.”⁵⁵⁰ Highlighting the unfairness and lack of sound justification for including only penile-vaginal penetration, Roffee further argues that “[j]ust as there are family members in need of protection from non-consensual vaginal intercourse, there are individuals who need protection from family members who engage in non-consensual anal and oral penetration.”⁵⁵¹ Additionally, by proscribing solely sexual intercourse, incest laws discriminate based on sex because males cannot avail themselves of the protection of these incest laws.⁵⁵² Roffee further notes that “[r]esearch highlights the profound effect that incest has on males, which is surely exacerbated by the law’s ignorance of their plight.”⁵⁵³

Recognizing the changes in modern family structures to more diverse forms, some countries have moved or are moving toward including affinity and cohabitating relationships in their incest laws. England has recognized the changes in the modern family and has included adoptive and foster

544. *Id.* at 102.

545. *Id.* at 98.

546. *Id.* at 98-99.

547. *See* Roffee, *supra* note 133, at 169.

548. *Id.*

549. *Id.* at 170.

550. *Id.*

551. *Id.* at 172.

552. *Id.* at 169.

553. *Id.* at 180.

parents in its incest laws.⁵⁵⁴ Additionally, several African countries changed their incest laws and have broadened the scope of persons who may be charged for incest. Professors Cynthia Bowman and Elizabeth Brundige reviewed several African countries that had undergone legislative reforms to better fulfill their duties under international and regional human rights treaties “to protect children from sexual violence within the family and to provide redress where it occurs.”⁵⁵⁵ In fact, the authors noted that several African countries, “including Liberia, Kenya, Lesotho, Namibia, South Africa, and Tanzania, have promulgated new specialized sexual offences laws, and others have enacted relevant amendments to existing laws.”⁵⁵⁶ The laws increased penalties for perpetrators of child sexual abuse and in some countries penalized persons who allow children to be abused.⁵⁵⁷ The authors further noted that legislative reform expanded the “definitions of incest and of other offences under which it may be prosecuted.”⁵⁵⁸ To illustrate, “laws in Ethiopia and Kenya have included ‘indecent acts’ and penetration within the definition of incest,” and South Africa “defines incest as involving an ‘act of sexual penetration’ between two persons and now can be used to punish homosexual abuse of children by a female or male relative.”⁵⁵⁹ Like England and the UK, South Africa and Zimbabwe incest prohibitions include adoptive parents.⁵⁶⁰ The authors also observed that some countries have “amended their laws to make the offences of rape and defilement gender neutral, to include penetrative anal or oral sex within their definitions, and to increase penalties for the offence of sexual assault.”⁵⁶¹ A number of countries have increased the age of consent to eighteen.”⁵⁶²

Each state in the United States decides the scope of its incest laws. The incest laws in all states criminalize sexual relations between biological parent

554. Sexual Offences Act 2003, c. 42 (U.K.), <https://www.legislation.gov.uk/ukpga/2003/42/contents> (defines familial sexual abuse as being “between a person and their parent (including adoptive or foster), grandparent, child, grandchild, sibling or half-sibling, uncle, aunt, nephew or niece.”).

555. Bowman & Brundige, *supra* note 67, at 263.

556. *Id.* at 266. (The authors also noted the observations of the South African Law Commission (SALC) which indicated that “more attention should be paid to abuse in the home, in part because such abuse plays a major role in commercial sexual exploitation of children, who run away from home to escape incest and then often fall prey to prostitution and human trafficking.”); *id.* at 268.

557. *Id.* at 266-68.

558. *Id.* at 267.

559. *Id.* (discussing South Africa’s 2007 *Criminal Law (Sexual Offences and Related Matters) Amendment Act*).

560. *Id.*

561. *Id.*

562. *Id.* at 268.

and child⁵⁶³ but the laws vary as to who is considered a family member and what sexual acts are prohibited. All states criminalize sexual relations between biological parent and child, in large part because of the history of the traditional family as the normative family and the universal taboo on parent-child sexual relations.⁵⁶⁴ Considering the proliferation of the reconstituted family, some states also criminalize sexual relations with social parents and persons related by affinity.⁵⁶⁵ For example, Georgia's incest laws explicitly proscribe stepparent-stepchild sexual contact.⁵⁶⁶ In a case from that state, a stepfather challenged the statute on the grounds that incest cannot be established because he and the victim, his stepdaughter, are not related by blood. The court rejected his argument, noting that "[c]lassification on the basis of stepparent and stepchild bears a rational relationship to the governmental interest in protecting children and family unity."⁵⁶⁷ This rationale applies to prohibiting sexual intercourse between a parent and stepchild related by marriage, as for those persons related by blood."⁵⁶⁸ In a concurring opinion Justice Sears noted that looking at the incest taboo, "history has defined "close relative" in different ways."⁵⁶⁹ Therefore, "Georgia's decision to include step-parents in its statutory proscription against incest is neither unreasonable nor out of keeping with the historical purpose and meaning of the taboo."⁵⁷⁰

As Professor Christine McNiece Metteer points out from looking at caselaw from states courts that criminalize sexual relations with minors and adults related by blood and affinity,⁵⁷¹ those states have reasoned that they have a vested interest in protecting "young persons from sexual contact by

563. Murray, *supra* note 168, at 104.

564. Fischer, *supra* note 147, at 94, 95.

565. GA. CODE ANN. § 16-6-22 (2022); UTAH CODE ANN. § 76-7-102 (2022); MONT. CODE ANN. § 43-5-507 (2023) (Montana's incest statute prohibits marriage, cohabitation, and sexual intercourse, and statutorily defined sexual contact between "an ancestor, a descendant, a brother or sister of the whole or half blood, a nephew or niece, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter. [C]onsent is a defense to incest with or upon a stepson or stepdaughter, but consent is ineffective if the stepson or stepdaughter is less than 18 years of age and the stepparent is 4 or more years older than the stepson or stepdaughter.").

566. GA. CODE ANN. § 16-6-22 (2022).

567. Benton v. State, 461 S.E.2d 202, 205 (Ga. 1995), *overruled by* State v. Burns, 829 S.E.2d 367 (Ga. 2019) (The stepfather had sexual intercourse with his stepdaughter at gunpoint).

568. *Id.*

569. *Id.*

570. *Id.*

571. *People v. Armstrong*, 536 N.W.2d 789, 793 (Mich. Ct. App. 1995) (using Random House College Dictionary's (rev. ed.) definition of "affinity" which is a "relationship by marriage or by ties other than those of blood.").

persons with whom they have a special relationship, such as relatives.”⁵⁷² McNiece Metteer also notes that “[s]uch “special relationships” are generally assumed to be those between children and adults living in the same household, when the adult has some power over the child. . . . that adult is usually a parent or someone with “parental authority,” but may be anyone who acts as a “caretaker” and is responsible for the child.”⁵⁷³ McNiece Metteer further notes that where “state incest legislation assumes a “special relationship,” the state’s interest must be in regulating situations in which there is a “power imbalance.”⁵⁷⁴ Power imbalances within family situations are not limited to blood relatives but are also present with persons related by affinity.⁵⁷⁵ This power imbalance is typically more pronounced when the child is a minor, but may also continue “even after the age of majority” particularly if the weaker family member lives in the same household or the “more powerful relative continues in a dominant role” in the weaker family member’s life.⁵⁷⁶

In the United States, the incest laws in some states, like Alabama, proscribe marriage and sexual intercourse with adoptive parents and child and stepparents and stepchildren but limits the restriction until the “the marriage creating the relationship ceases to exist.”⁵⁷⁷ Also in some states, like New York, the incest law is gender neutral and expands the scope of punishable sexual conduct to include sexual intercourse, and oral and anal sexual penetration.⁵⁷⁸

In France, incest recently became an autonomous crime in 2021.⁵⁷⁹ Significantly, however, France has a longstanding and pervasive problem of intrafamilial child sexual abuse. Results of a 2020 poll offered as proof of the problem showed that “[o]ne in 10 French people say they are victims of incest, “with 78 percent of the reported victims female and 22 percent

572. McNiece Metteer, *supra* note 164, at 275 (“The Legislature intended to provide young people with enhanced protection from assaults by family members.”).

573. *Id.*

574. *Id.*

575. *Id.*

576. *Id.* at 276.

577. ALA. CODE § 13A-13-3 (2023); *see id.* at 275.

578. N.Y. PENAL LAW § 255.25 (Consol. 2024) (“A person is guilty of incest in the third degree when he or she marries or engages in sexual intercourse, oral sexual conduct or anal sexual conduct with a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.”).

579. Peter Yeung, *France Is Finally Thinking About Making Incest a Crime But Politicians Are Accused of Watering the Law Down*, DAILY BEAST (Feb. 15, 2021, 10:37 AM), <https://www.thedailybeast.com/france-is-finally-thinking-about-making-incest-a-crime-but-politicians-are-accused-of-watering-the-law-down>.

male.”⁵⁸⁰ Yet, prior to 2021, intrafamilial sexual abuse of minors under fifteen years old in France was not a crime but viewed by the French justice system as an “aggravating circumstance.”⁵⁸¹ A movement to protect children from intrafamilial sexual abuse gained traction after French lawyer and author, Camille Kouchner published her memoir in which she accused her stepfather, prominent political scientist, and journalist Olivier Duhamel of sexually abusing her twin brother when he was fourteen years old.⁵⁸² Kouchner alleged that the sexual abuse remained undisclosed for years because of a gripping culture of silence.⁵⁸³ Friends and family who knew of the abuse chose to remain silent, and the small group of people who wanted to talk about the abuse were persuaded to remain silent.⁵⁸⁴ Disappointingly, the children’s biological parents also chose to remain silent.⁵⁸⁵ Kouchner alleged that her mother remained silent, choosing to “protect her husband rather than her children”⁵⁸⁶ and Kouchner’s biological father, Dr. Bernard Kouchner, founder of Doctors with Borders, also chose silence.⁵⁸⁷ Kouchner’s twin brother, “the victim,” refused to talk about the abuse for a long time.⁵⁸⁸

Kouchner’s book served as a catalyst for the #IncestMeToo movement which gave victims of intrafamilial sexual abuse the platform on social media to bring awareness to the instances and harm of intrafamilial sexual abuse.⁵⁸⁹ The flood of allegations of incest caused the French legislature to recommend “tougher laws against the sexual abuse of children.”⁵⁹⁰ As a result of these efforts, French incest laws proscribe any sexual penetration of a person under fifteen years old by an adult who is related by blood or by social ties, such as the “the spouse, the cohabitee, the partner bound by a civil union” to the blood relative.⁵⁹¹ Stepfathers and parent’s boyfriends, are considered to be

580. *Id.*

581. Mondragon et al., *supra* note 147, at 2.

582. Ghica-Lemarchand, *supra* note 296, at 44; Constant Méheut, *Incest Scandal Sets Off a New #MeToo Movement in France*, N.Y. TIMES (Jan. 18, 2021), <https://www.nytimes.com/2021/01/18/world/europe/duhamel-france-incest.html>.

583. *See generally* Ghica-Lemarchand, *supra* note 296, at 44.

584. *Id.*

585. *Id.*

586. *Id.*

587. *Id.*

588. *Id.*

589. *See id.*

590. Holloway, *supra* note 201, at 2; *see* Mondragon et al., *supra* note 147, at 9 (noting that “movement created on social networks has already had a direct impact on French politics (with the creation of specific commissions and changes in laws).”).

591. Ghica-Lemarchand, *supra* note 296, at 57.

persons related by social ties.⁵⁹² Sexual penetration and blood ties are sufficient to establish incest, but for people with social ties it must be shown that “they have a legal or de facto authority over the victim.”⁵⁹³

Most incest laws in the Caribbean narrowly define incest as sexual intercourse between close blood relatives.⁵⁹⁴ However, a survey of child sexual abuse in the Eastern Caribbean by social scientists Adele Jones and Ena Trotman Jemmott found that “respondents defined incest as also including sex with non-biological parents such as step-parents and adoptive parents.”⁵⁹⁵ Jones and Trotman Jemmott noted that “[t]his broadening of the definition marks an important shift in attitudes and is probably linked to changes in the nature of the Caribbean family with many more families now including stepparents (usually stepfathers) and perhaps reflects a wide acceptance of this family type.”⁵⁹⁶ Jones and Trotman Jemmott urged “legislators and policy makers to ensure that the incest laws also fully reflect the contemporary nature of Caribbean family life.”⁵⁹⁷

Amnesty International made a similar suggestion, one that is central to this Article, that Jamaican laws “need to be updated to reflect the high number of live-in, serial common-law relationships that women may experience during their lifetimes.”⁵⁹⁸ Amnesty International argued that “[t]he classic case of incest involves a girl child and her father, step-father or father figure”⁵⁹⁹ and that “[I]ncest does not necessarily imply a biological relationship but a social one between a child and a parental figure.”⁶⁰⁰

Importantly, Amnesty International highlighted that “[t]he law and the administration of the law are crucial to the formation of social attitudes.”⁶⁰¹ When put into context, this statement suggests that including affinity and cohabitating “relatives” into the incest provision of Jamaica’s Sexual Offences Act will typically influence social attitude toward viewing sex with relatives as incest and therefore taboo.

592. *Id.*

593. *Id.*

594. JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 13.

595. *Id.*

596. *Id.*

597. *Id.*

598. AMNESTY INT’L, *supra* note 114, at 6.

599. *Id.*

600. *Id.*

601. *Id.* at 28.

VI. NEW FRAMEWORK FOR MOVING FORWARD

It is clear that intrafamilial child sexual abuse harms victims, families and society. It is also clear that Jamaica has a pervasive problem of intrafamilial child sexual abuse and “people really want it to end.”⁶⁰² Most Jamaican citizens are tired of the scourge of intrafamilial child sexual abuse and are ready for it to end. The Jamaican government has displayed commitment to end violence against children, including sexual abuse, by joining the United Nation’s Global Partnership and Fund to End Violence Against Children “which is focused on ending all forms of violence, abuse and exploitation of children.”⁶⁰³ In fact, Jamaica became a Pathfinder country which shows a strong commitment to ending all forms of violence against children.⁶⁰⁴ “Pathfinder countries are prepared to stand up for children. They are committed to fast-track efforts to make children safe and ensure that child victims of violence are not marginalized in the global development agenda.”⁶⁰⁵ As a Pathfinder country, Jamaica has committed “to three to five years of accelerated actions towards ending violence against children.”⁶⁰⁶ Jamaica’s National Plan of Action for an Integrated Response to Children and Violence (NPACV) was created to fulfil this commitment and “will be implemented over a five-year period.”⁶⁰⁷ One of the five expected outcomes of the NPACV is to have “stronger policy and legal and regulatory framework to ensure the protection of children from all forms of violence and abuse.”⁶⁰⁸

To that end, it is important to revisit the incest provision of the Sexual Offences Act. Specifically, it is time to get rid of the idea of the nuclear family as Jamaica’s normative family, face reality of the current predominant single-parent household and expand the incest provision to include affinity and cohabiting relationships; it is time to make the incest provision gender

602. Hibbert, *Incest ‘Hot Spot’*, *supra* note 112 (noting that people in Jamaica are at the stage where they really want intrafamilial child sexual abuse to end).

603. Latonya Linton, *PM Says Gov’t Will Act With Urgency To Address Violence Against Children*, JAMAICA INFO. SERV., (Nov. 20, 2019), <https://jis.gov.jm/pm-says-govt-will-act-with-urgency-to-address-violence-against-children/>.

604. Judith A. Hunter, *Jamaica in Global Partnership to End All Forms of Violence, Abuse and Exploitation of Children*, JAMAICA INFO. SERV., (Nov. 17, 2023), <https://jis.gov.jm/jamaica-in-global-partnership-to-end-all-forms-of-violence-abuse-and-exploitation-of-children/#:~:text=As%20part%20of%20its%20strategies,abuse%20and%20exploitation%20of%20children.>

605. *Id.*

606. *Id.*

607. Hibbert, *Incest ‘Hot Spot’*, *supra* note 112 (noting NPACV was approved by the Cabinet in 2019); NATIONAL PLAN OF ACTION, *supra* note 116.

608. Hunter, *supra* note 604.

neutral; expand the proscribed sexual act beyond sexual intercourse to at a minimum include anal, oral, and digital penetration; and increase the age of consent for all sexual offenses to eighteen years old.

First, the incest provision under the Sexual Offences Act should move beyond limiting the incest prohibitions to consanguineal relationships and broaden the scope of persons responsible for incest under the Sexual Offences Act to include persons related by affinity and cohabitation. To be clear, the incest provision should explicitly include stepfathers, mother's or guardian's partners, foster parents, adopted parents, caretakers, and legal and nonlegal guardians. The traditional nuclear family as the normative family is no longer the predominant family structure and has not been for a while. In a country dominated primarily by single-parent households, it is time to put aspirations to the side and acknowledge what is present. Based on the prevailing single-parent and reconstituted family structures, children are being exposed at a higher rate to non-blood relatives who live in the same house or exercise dominance, control, and power over their lives, simulating a biological child-parent relationship, however, in the eyes and four corners of the incest law, they are not accorded the same protection as biological children. In fact, even when some men raise their stepdaughters from birth, they may not consider them as their children and the incest law agrees. The double standard is lethal. David Finkelhor has maintained throughout his extensive study of child sexual abuse that a definition of incest based solely on consanguineous relationships is illogical because "many step-parents and step-siblings live together in relationships that are virtually indistinguishable from those maintained by natural parents and siblings."⁶⁰⁹ Finkelhor further maintained that "incest with step-parents and step-siblings violates a taboo that does exist – especially in those families in which step-relations have taken on the trappings of normal family – and when violated, the consequences are similar to those in cause with natural family members."⁶¹⁰

Expanding the reach of the incest statute beyond close blood relatives is also particularly relevant given the prevalence of misattributed paternity in Jamaica and the possibilities of assisted reproduction. In both instances, children are raised by adults who they believe are their parents, in families that take on the trappings of a normative Jamaican family, yet DNA evidence proves that there is no biological connection between the children and

609. FINKELHOR, *supra* note 71, at 84.

610. *Id.*; see Dorothy Willner, *Definition and Violation: Incest and the Incest Taboos*, 18 ROYAL ANTHROPOLOGICAL INST. OF GREAT BRITAIN & IR., 134, 141 (1993) ("[I]f sexual abuse by a father surrogate or familiar male is no less destructive than incest imposed by a father or older brother, this might be an element underlying the extension of kinship categories and incest taboos to most or all adults . . . such extensions also help to protect the children from sexual abuse by adults.").

“parent.” In instances such as these, a charge of incest would not be sustained, and the perpetrator goes unpunished, or the victim faces more hurdles to get justice.

It is clear that the legislative intent is not to proscribe incest based solely on genetics because the law clearly limits the list of persons who may be charged for incest to blood relatives who “knew or had reasons to know” that they are related. Knowledge of the consanguineal bond is material to establishing a charge for incest. This means that two people who are closely related and who would have otherwise been charged with incest would escape liability because they did not know they were related by blood. The lack of requisite knowledge does not negate the blood ties or minimize arguments based on possible genetic defects.

Naming the violation as incest matters. The incest taboo continues to be universally recognized. Taboos and laws are among examples of the three types of incentives that “govern individuals’ behavior.”⁶¹¹ The incest taboo is powerful in that it sends a clear signal that an act is repugnant which may cause persons to refrain from doing that act.⁶¹² While intrafamilial child sexual abuse can be prosecuted under other provisions of the Sexual Offences Act, it does not seem fair that victims who are not related to the perpetrators by blood, but who have similar relationships with the perpetrator like their biological children, would have to face additional hurdles - it is important to name it - incest.

Second, the incest provisions of Jamaica’s Sexual Offences Act should be gender neutral. The incest provision as it currently stands makes it impossible for same sex perpetrators to be charged with incest. In truth, by ignoring and explicitly excluding same-sex violations, the incest provision sends a message that these violations are invisible, unimportant, or worse, nonexistent. The current incest provision makes it a crime for a man to have sexual intercourse with a statutorily defined close blood female relative or a female to have sexual intercourse with a statutorily defined close blood male relative. What then happens to boys who are sexually abused by close blood male relatives, including fathers and grandfathers? Despite the plethora of literature that shows that boys⁶¹³ are being sexually abused at alarming rates inside their homes and at the hands of close blood and affinity relatives of

611. Fershtman et al., *supra* note 166, at 142 (“[I]n every society there are three types of incentives that govern individuals’ behavior: private rewards such as any monetary incentives; social incentives such as norms, taboos, social prestige; and legal incentives that enforce certain types of behavior and penalize deviations.”).

612. *Id.* at 140.

613. JONES & JEMMOTT, CHILD SEXUAL ABUSE REPORT OF STUDY, *supra* note 78, at 55; Finkelhor, *Nature of Child Sexual Abuse*, *supra* note 80, at 58.

the same sex, the incest provision of the Sexual Offences Act chooses to ignore this reality and instead force victims of intrafamilial same sex abuse to look outside of the provision to seek a remedy. By continuing with a gender normative position that proscribes solely heterosexual intrafamilial sexual abuse, the incest provision explicitly others non-heterosexual intrafamilial sexual abuse relegating such violations to a lesser status of importance. It is no surprise that because the law “others” same-sex child sexual abuse, boys may not seek the help they so desperately need to work through the emotional and psychological trauma surrounding the abuse.⁶¹⁴ The same applies for girl-victims of same-sex child sexual abuse. The reasons stakeholders calls to revise the incest law to make it gender neutral have not been considered by the legislature are longstanding and beyond the scope of this Article.⁶¹⁵ However, Jamaica has an international obligation to protect all children from child sexual abuse. The duty to protect is not limited to physical harm. The duty extends to emotional and psychological harm resulting from intrafamilial sexual abuse. If a male or female child feels unsafe to report a same-sex encounter because society stigmatizes the abuse and the law echoes that stigma, then the duty has been breached.

Third, the incest provisions of the Sexual Offences Act should be revised to include all forms of sexual touching and penetration within the family, not only sexual intercourse.⁶¹⁶ Limiting the proscribed sexual act to sexual intercourse is underinclusive in that it captures only one form of sexual contact, and it makes space for boys to be treated unequally to girls. As an initial matter, sexual intercourse is not the only sexual encounter that harms children. Sexual touching, and other forms of sexual penetration are also harmful and threaten a child’s feeling of safety.⁶¹⁷ In addition, sexual intercourse defined as penile penetration of the vagina explicitly excludes equally harmful and violative sexual acts such as non-penile penetration of the vagina; other forms of sexual penetration such as oral, digital, or anal

614. Coleman, *supra* note 66, at 281 (arguing that there is a deficiency in the incest statutes that proscribe only heterosexual because men sexually abuse male children, “whereas girls seem able, with competent professional help, to learn to cope with many of the psychological problems caused by incestuous behavior, boys may experience psychotic breaks.”).

615. See Edmond Campbell, *Boys at risk - Hanna wants tougher sanction for men who abuse boys*, THE GLEANER (Apr. 3, 2018, 12:00 AM), <https://jamaica-gleaner.com/article/lead-stories/20180404/boys-risk-hanna-wants-tougher-sanction-men-who-abuse-boys>.

616. See McConnell, *supra* note 182, at 163 (noting that because of the power imbalance in intrafamilial relationships, incest significantly harms the victim “irrespective of whether there is full, forced sexual intercourse.”).

617. Finkelhor, *Nature of Child Sexual Abuse*, *supra* note 80, at 42-43; Roffee, *supra* note 133, at 175.

penetration.⁶¹⁸ Lastly, proscribing solely penile penetration of the vagina means that boys cannot qualify as victims and girls who have been orally, digitally, or otherwise penetrated also cannot qualify as victims of incest even where that would be the case if the abuse involved penile penetration.

Relatedly, the legislature should revise the Sexual Offences Act to be consistent in defining a “child.” In the interpretation to the Sexual Offences Act, a child is defined as “a person under eighteen years old”, which accords with the international definition of a child. Yet, in part IV of the Act which addresses Sexual Offences Against Children and Indecent Assault, a child is defined as “a person under 16 years old.”⁶¹⁹ Put another way, the age of maturity under the Act is 18 years old, yet the age of consent for sex is sixteen years old.⁶²⁰ This change is significant in many ways for effectively prosecuting intrafamilial sexual abuse. For one, children now typically do not leave home or the custody and control of their relatives or caregivers at age sixteen. In fact, many children aged sixteen to eighteen are about to finish high school and are still living at home. It is most typical for a child to leave home after the age of eighteen. As it stands, a close relative who has power and control over the child, acts as a parent, lives in the same household or frequents the household where the child lives but who is not named in the statutorily defined group that can be charged with incest, and cognizant of this gap in the law, may sexually groom the child over a period of time but would wait until the child reaches 16 years old to have sexual intercourse. In that scenario, what would have clearly been incest under Jamaica’s Sexual Offences Act if the offender were a statutorily named linear ascendant of the child or Sexual Intercourse with a Person Under Sixteen would now have to be prosecuted as rape or grievous sexual assault. Unlike incest or Sexual Intercourse with a Person Under Sixteen, a charge of rape and grievous sexual assault carries an additional burden of disproving consent, a material element.

618. Finkelhor, *Nature of Child Sexual Abuse*, *supra* note 80, at 42 (pointing out that the criminal code and law enforcement “places a lot of emphasis on distinguishing between sexual crimes that do involve penetration and those that do not” but child protective and mental health professionals have found from their research and clinical experience that “non-penetrative abuse . . . have an equally serious impact on the children.”); Roffee, *supra* note 133, at 175 (nothing the harm in incest is “the violation caused by a perpetrator who ‘is assumed to stand in a protective role to the victim’” therefore consistent with the views of therapists, incest should not be defined solely to penile-vaginal acts because the harm, the violation of a position of trust to occur in sexual acts outside of penile-vaginal penetration.”).

619. Sexual Offences Act, (2009) § 8, (Act No. 12/2009) 1, 12 (Jam.).

620. NATIONAL PLAN OF ACTION, *supra* note 116.

Now, my proposal will not end the current intrafamilial epidemic because even with the best laws, enforcement must be equally robust.⁶²¹ It is my hope however, that strengthening the incest laws will drastically reduce incidents of intrafamilial child sexual abuse. Like Professor Jonathan Todres mentioned regarding human trafficking, you cannot prosecute yourself out of the intrafamilial child sexual abuse epidemic.⁶²² As I envision it, a winning framework would be the revised statute, robust enforcement, available rehabilitative services, and persistent and targeted education. The government should focus on targeted strategies to educate citizens of the incest law, and the harms caused by intrafamilial child sexual abuse. All media forms including social and traditional media, and music should be used to share the message of incest harms and punishment to perpetrators.⁶²³ In addition, the message should be shared widely though the community, including at churches, rum bars, schools, hairdressing parlors, and in the markets. Like France's #IncesteMeToo, the aim here should be to rewrite the narrative. First, make clear that intrafamilial child sexual abuse is a crime that causes dire individual and societal harm and that its perpetrators will be prosecuted. Second, name it (incest) and name them (the perpetrators). Include stepparents and stepchildren, adopted parents and children, and persons *in loco parentis*, particularly if the child is dependent on them.

VII. CONCLUSION

Jamaica should revise the incest provision of the Sexual Offences Act to include affinity and cohabiting relationships, homosexual penetration and sexual acts, and other forms of sexual touching: specifically oral, anal, and digital penetration. Jamaica has an international obligation to adequately protect all children from child sexual abuse and the fact that sexual abuse happens most often in the home is a pressing reality. Presently, Jamaica's incest law only proscribes heterosexual sexual intercourse with close blood

621. CHILD SEXUAL ABUSE EASTERN CARIBBEAN: PERCEPTIONS, *supra* note 85, at 25 (documenting comments from child sexual abuse practitioners in the Caribbean that there is room for improvement in substantive law but even where "laws and policies [are] in place, their implementation was so weak that it rendered the systemic responses to child sexual abuse almost useless.").

622. Todres, *supra* note 66, at 99; see Samms & Cholewa, *supra* note 111, at 122 ("[T]he increased rate of sexually abused children in Jamaica may indicate that more public education campaigns need to be developed." Also suggesting public health campaigns and education campaigns to inform the public of the legal ramifications of failing to report child sexual abuse).

623. FRAY ET AL., *supra* note 93, at 8 (noting that "[p]romoting CSA prevention is everyone's responsibility and there needs to be greater emphasis on increasing awareness at all levels of society about the risks for, and signs of, CSA, sexual grooming and the contribution of bystander apathy to the problem.").

relatives. The narrow reach of the current incest law is inadequate because it fails to protect all vulnerable children and deter a known group of perpetrators who typically have unrestricted access to children within their homes, who act as parental figures and upon whom the children depend for care and affection. This groups includes stepfathers, mother's or guardian's boyfriends, and persons acting in *loco parentis*.

Based on the Census Bureau statistics and anecdotal evidence, it is safe to say that a majority of children in Jamaica live in homes where the male or female who is responsible for their care or on whom they are dependent is not a biological relative.⁶²⁴ In fact, the traditional nuclear family consisting of a mother and father, and biological children as Jamaica's normative family has long been superseded by the single-parent female-headed household that often allows non-biological parental figures to move in and out of the home. This arrangement creates unbridled sexual access to the children, boys and girls alike, in these households, and therefore increases the risk of child sexual abuse at the hands of parental figures who are unrelated to the children by blood. Additionally, Jamaica's patriarchal culture that supports the belief that the man is entitled to access to any female under his roof that he feeds, and the added tragic perspective that stepchildren and other non-biological children have to earn their keep through sexual favors, create a toxic and unsafe home environment that robs the child of the right to a safe and secure home.

It is without question that intrafamilial child sexual abuse at the hands of biological and non-biological, transient and non-transient, parental figures affects the victims, their families, and the society at large. Victims of intrafamilial child sexual abuse suffer long-lasting mental, emotional, and physical harms including severe mental health issues, PTSD, and drug addiction. Some victims have developed violent propensities, and some have themselves becoming abusers perpetuating a vicious and unhealthy cycle. Some family members carry the burden of secondary trauma while society loses what could have been productive citizens while paying directly or indirectly to support the victims and perpetrators. Intrafamilial child sexual abuse is not an individual problem. It is Jamaica's problem.

With this information in mind, research-based findings that child sexual abuse occurs disproportionately at home, and Jamaica's acknowledged need to extend protection into the home, it is time to expand the incest law. Name it. There is power in naming. Naming invokes the incest taboo which may

624. See Bose-Duker et al., *supra* note 68 (noting that based on the Census Bureau statics and anecdotal evidence, it is safe to say that a majority of children in Jamaica live in homes where a male or female who is responsible for their care or on whom they are dependable is not a biological parent); see also NATIONAL PLAN OF ACTION, *supra* note 116, at 25.

deter some perpetrators from acting. Crime in Jamaica will never get better until sexual violence against children and adults is dealt with effectively. In short, the law needs to be clear and adequately cover the harm.