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Editor's Introduction

Welcome to the Twenty-Third Volume of *Journal of Law and Social Deviance (LSD Journal)*, an independent, peer-reviewed journal. *LSD Journal* encourages submissions from a wide range of professionals, researchers, and scholars in a variety of fields. Within our broader interest in social deviance and the law, we are particularly interested in how law creates, inhibits, or challenges deviant behavior, especially as it evolves from, responds to, or inspires the animal kingdom, art, design, structure, pop culture, hate, religion, sex, illness, work, drugs, terrorism, and youth. Volume 24 is about making attitudes better. It is a process. When perspectives are focused historical and scientific foundations inundate the mind with strength making decisions easier to tie groups together. Binding is positive. This volume evokes conscionable effort and caring procedures that influence basic and legal attitudes. *LSD Journal* remains committed to publishing articles, essays, and book reviews that strongly represent the journal's niche and offer readers important, substantive, and useful literature.

Contribution

Re: Submissions, Subscriptions, and Comments

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MEDICAL SECRECY IN THE CONTEXT OF DOCTOR'S OBLIGATION AND PATIENT'S RIGHT: LEGAL ANALYSIS

Olena Riabchynska, Eduard Stomatov, Mykhailo A.
Anishchenko, Yurii V. Filei¹

I. INTRODUCTION

A. Abstract

The Article points out the existence of certain problems with the regulation of certain aspects of the consolidation and implementation of medical secrecy in Ukraine. Emphasis is placed on the need for legal analysis and proposals for their solution. It

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also emphasizes the need to develop a comprehensive approach to building public confidence in the system of medical services, which should be based on the establishment of effective state guarantees for the protection of patients' rights, which includes the institution of medical secrecy. It has been determined to which legal regime information on the state of health of an individual belongs under the current legislation of Ukraine and the official interpretation of the Basic Law by the Constitutional Court of Ukraine. The disadvantages of using the term "doctor's secrecy" are noted and the advantages of using the term "medical secrecy" in the legislative process are given. The experience of regulating the institute of medical secrecy in international legal acts is presented and a parallel with the relevant norms of national legislation is drawn. It is indicated what information constitutes medical secrecy, who is the subject of medical secrecy. The time limits for maintaining medical secrecy have been determined. The existence of problems in the possibility of disclosing medical

secrecy after the death of a person is noted. The importance of the patient's right to maintain secrecy about his health is substantiated, based on the regulations of Ukraine and international law. The right to medical secrecy of people living with HIV and the possibility of compensation for its violation are considered separately. It is noted that an important aspect of the existence of any obligation is the responsibility for its violation. In this context, the types of legal liability for the disclosure of medical secrecy are considered. The judicial practice in cases of disclosure of medical secrecy, including the decision of the European Court of Human Rights, is analyzed. Emphasis is placed on the existence of significant practical problems with the public law aspect of liability for illegal disclosure of medical secrecy. It is proposed to improve the legal regulation of medical secrecy.

B. Relevance of the Research Topic

In the process of reforms taking place in Ukraine, the issue of improving the level of protection of patients' rights remains extremely important. One of these inalienable rights is the right to medical secrecy. The existence of this right is necessary in the context of the existence of trust in society both in medical workers and in the entire system of providing medical services in the state. Without such trust, many will refuse to receive such services, putting their lives and health at risk, or will not provide medical professionals with information that may be important for obtaining quality treatment, which, in the event of complex epidemiological situations in the state, may have not only personal, but also significant social harm. As noted by Carmen M. Cusack, the state must take into account that patients have a "reasonable expectation" of maintaining their confidentiality in connection with

receiving medical services.² Therefore, an integrated approach to building public confidence in the healthcare system should be based on the establishment of effective state guarantees for the protection of patients' rights, which include the institution of medical secrecy. Currently, there are certain problems with the preparation of certain aspects of the consolidation and implementation of medical secrecy in Ukraine, which requires its legal analysis and the development of proposals for their solution.

The purpose of the Article is to clarify the essence and content of the concept of “medical secrecy” in the context of observance by doctors and other persons, their obligations, and the realization of the rights of patients, formulating the most perfect definition for fixing in national legislation in order to

² CARMEN M. CUSACK, *LAWS RELATING TO SEX, PREGNANCY, AND INFANCY: ISSUES IN CRIMINAL JUSTICE* (2015), AT 189, *available at* https://books.google.com.ua/books?id=ZArACQAAQBAJ&pg=PT17&lpq=PT17&dq=carmen+m.+cusack+privacy+health&source=bl&ot_s=A5dZ-pGDeS&sig=ACfU3U1CIgpnSy-wqevLT-gcE9-_vGTLYA&hl=ru&sa=X&ved=2ahUKEwiNuqn10cD4AhVsk_0HHZfwB60Q6AF6BAgSEAM#v=onepage&q=carmen%20m.%20cusack%20privacy%20health&f=false.

unambiguously interpret and apply the identification of existing problems of the institution of medical secrecy in the system of law of Ukraine and providing proposals for their solution.

II. PRESENTATION OF THE MAIN MATERIAL

One of the basic constitutional rights is the right to freedom of thought and speech, to freely express one's views and beliefs. Everyone has the right to freely collect, store, use and distribute information orally, in writing or in another way—at their choice. However, according to the provisions of Article (Art.) Three of the Constitution of Ukraine, a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value, therefore, along with the consolidation of the aforementioned right, conditions are established under which it can be limited. Relevant restrictions may, firstly, be established exclusively by law, and secondly, they must concern the interests of national security, territorial integrity, or public order in order to prevent riot or crime, for public

health, to protect the reputation or rights of others, to prevent disclosure of information received in confidence, or to maintain the authority and impartiality of justice. Moreover, the Constitution of Ukraine in Art. 32 establishes:

No one can be subjected to interference in his personal and family life, except in cases provided for by the Constitution of Ukraine. It is not allowed to collect, store, use and distribute confidential information about a person without his consent, except in cases specified by law, and only in the interests of national security, economic well-being and human rights.³

The Constitutional Court of Ukraine, in its official interpretation of this article, indicated that information about the personal and family life of an individual (personal data about it) is any information or a set of information about an individual that is identified or can be specifically identified, namely: nationality, education, marital status, religious

³ Constitution of Ukraine: Law of Ukraine, No. 254k/96-BP, June 28, 1996. Information of the Verkhovna Rada of Ukraine No. 30 (1996), at 141, *available at* <https://zakon.rada.gov.ua/laws/main/254k/96-bp#Text> (Jun. 19, 2022).

beliefs, state of health, financial condition, address, date and place of birth, place of residence and stay, etc., data on personal property and non-property relations of this person with other persons, in particular family members, as well as information about events and facts that have taken place or are taking place in the domestic, intimate, friendly, professional, business, and other spheres of a person's life, with the exception of data on the exercise of powers by a person holding a position related to the implementation of the functions of the state or local self-governments. Such information about an individual and his family members is confidential and can be distributed only with their consent, except in cases specified by law, and only in the interests of national security, economic well-being, and human rights.⁴ That is to say, from the provisions of the Constitution of Ukraine it clearly

⁴ Decision of the Constitutional Court of Ukraine, January 20, 2012, No. 2-пн/2012, In the Case of the Constitutional Submission of the Zhashkiv District Council of the Cherkasy Region Regarding the Official Interpretation of the Provisions of the First and Second Parts of Article 32 and the Second and Third Parts of Article 34 of the Constitution of Ukraine, OFFICIAL GAZETTE OF UKRAINE No. 9 (2012), at 332.

follows that information about the state of health of an individual is information about the personal and family life of an individual, and therefore is confidential. According to the provisions of the Law of Ukraine

On Information dated October 2, 1992 Number (No.) 2657-XII, confidential information is information about an individual, as well as information, access to which is limited to an individual or legal entity, except for subjects of authority. Confidential information can be distributed at the request (consent) of the relevant person in the manner determined by him/her in accordance with the conditions provided for by him/her, as well as in other cases specified by law.⁵

One of the main problems in the legal analysis of the institution of medical secrecy is the lack of a definition of this term in the legislation and the ambiguity of its understanding among specialized scientists. The Law of Ukraine “Fundamentals of

⁵ On Information: Law of Ukraine, No. 2657-XII, October 2, 1992. Information of the Verkhovna Rada of Ukraine, No. 48 (1992), at 650, available at <https://zakon.rada.gov.ua/laws/show/2657-12> (June 19, 2022).

Ukrainian Legislation on Health Care” dated November 19, 1992 No. 2801-XII only indicates the term “doctor’s secrecy,” which means that medical workers and other persons who, in connection with the performance of professional or official duties, became aware of the disease, medical examination, survey and their results, and intimate and family aspects of the life of a citizen do not have the right to disclose this information, except for the cases provided by legislative acts. When using information constituting a doctor’s secrecy in the educational process, research work, including in cases of its publication in specialized literature, the anonymity of the patient must be ensured.⁶ According to the author, in general, the use of the term “doctor’s secrecy” by the legislator in relation to the relevant legal relations is not correct enough, since the subject composition of this obligation is not limited only to doctors, but also includes all other medical workers,

⁶ Fundamentals of the Legislation of Ukraine on Health Care: Law of Ukraine of November 19, 1992 No. 2801-XII. Information of the Verkhovna Rada of Ukraine № 4 (1993) at 19, *available at* <https://zakon.rada.gov.ua/laws/show/2801-12#n551> (June 19, 2022).

as well as other persons who, in connection with information covered by the regime of doctor's secrecy became known in the performance of professional or official duties.

Medical secrecy is often understood as a synonym for doctor's secrecy. So, for example, in a message from the official website of the Ministry of Health of Ukraine entitled "The patient has the right: What you need to know about the right to medical secrecy," in fact, it is not about the right of the patient, but about the obligation of doctors and other persons not to disclose relevant information.⁷ Hanna Reznikova during her report at the seminar "Protection of the Rights of Medical Workers: Practical Recommendations and Strategic Proposals" also indicated that most scientists tend to believe that the terms "doctor's" and "medical" secrecy are conditional and are more often used as synonyms, because there is still no clear legal

⁷ Ministry of Health of Ukraine, "The Patient Has the Right: What You Need to Know about the Right to Medical Secrecy," February 19, 2019, *available at* <https://moz.gov.ua/article/health/pacient-mae-pravo-scho-treba-znati-pro-pravo-na-n-medichnu-tamnicju>.

distinction between these concepts.⁸ Also, the term “medical secrecy” is given in some by-laws of Ukraine in the sense of an identical definition of “doctor’s secrecy.”

The modern legislative understanding of the concept of “doctor’s secrecy” includes only the definition of the obligations of specific subjects (medical workers and other persons who, in connection with the performance of professional or official duties, became aware of the disease, medical examination, survey and their results, intimate and family aspects of the life of a citizen), ignoring the corresponding right of the patient. In the same Law of Ukraine “Fundamentals of Ukrainian Legislation on Health Care,” the patient’s rights to a secrecy about his health, the fact of seeking medical help, diagnosis, as well as information obtained during his medical examination, are separated from the content

⁸ Hanna Reznikova, Protection of the Rights of Medical Workers: Practical Recommendations and Strategic Proposals, Kyiv, June 12, 2017, <https://kd.od.court.gov.ua/sud1514/pres-centr/general/356269/>.

of the term “doctor’s secrecy.”⁹ In the provisions of Art. 286 of the Civil Code of Ukraine dated January 16, 2003 No. 435-IV stipulates that the right of an individual to a secrecy about the state of health, the fact of seeking medical help, a diagnosis, as well as information obtained during his medical examination includes the obligation of other individuals to refrain from disseminating information that became known to them in connection with the performance of official duties or from other sources.¹⁰ Therefore, the author considers it appropriate to exclude the term “doctor’s secrecy” from the legislation and replace it with the term “medical secrecy,” which will include, on the one hand, the patient's right to a secrecy about his health, the fact of seeking medical help, diagnosis, information, obtained during his medical

⁹ Fundamentals of the Legislation of Ukraine on Health Care: Law of Ukraine of November 19, 1992 No. 2801-XII. Information of the Verkhovna Rada of Ukraine № 4 (1993) at 19, *available at* <https://zakon.rada.gov.ua/laws/show/2801-12#n551> (June 19, 2022).

¹⁰ Civil Code of Ukraine, January 16, 2003 (2022) (amendments and additions). Information of the Verkhovna Rada of Ukraine. No. 40-44 (2003) at 356, *available at* <https://zakon.rada.gov.ua/laws/show/435-15> (June 19, 2022).

examination, information about the intimate and family aspects of the patient's life, and on the other hand, the obligation of medical workers and other persons who, in connection with the performance of professional or official duties, became aware of such information not to disclose it except as provided by law. The corresponding change in legislation focuses on the deeper content of the definition of patients' rights and will clearly correspond to the subject composition of persons to whom this obligation applies, separating them from other individuals who refrain from disseminating such information.

In general, the institution of medical secrecy is enshrined in a large number of international legal acts. Thus, in the European Charter of Patients' Rights in 2002, everyone has the right to confidentiality of personal information, including information about their state of health and possible diagnostic or therapeutic procedures, as well as to protect their privacy during diagnostic

examinations.¹¹ The International Code of Medical Ethics of 1949 states that a doctor must keep everything he knows about his patient in absolute secrecy, even after the death of the latter.¹² A very detailed substantive part of medical secrecy is disclosed in the 1994 Declaration on the Policy on Ensuring the Rights of the Patient in Europe, which states that all information about the patient's health status, diagnosis, prognosis and treatment of his disease, as well as any other personal information should be stored in secret, even after the death of the patient. Confidential information may be disclosed only when there is the express consent of the patient or is required by law. The consent of the patient to the disclosure of confidential information to the medical personnel involved in his treatment is presumed. All data that could reveal the identity of a

¹¹ European Charter of Patients' Rights, Council of Europe, June 20, 2002, *available at* <https://phc.org.ua/sites/default/files/uploads/files/hartia.pdf>.

¹² International Code of Medical Ethics. Adopted by the 3rd General Assembly of the World Medical Association, Geneva, Switzerland (Oct. 1949); 22nd World Medical Assembly, Sydney, Australia (Aug. 1968); and 35th World Medical Assembly, Venice, Italy (1983), *available at* https://zakon.rada.gov.ua/laws/show/990_002.

patient must be protected. The degree of protection should be adequate for the form of data storage. Components of the human body from which identification information can be obtained must also be stored in a secure manner. Patients who come and go to a health care facility have the right to expect that the facility has the supplies and equipment necessary to guarantee the preservation of medical secrecy, especially in cases where health workers provide care, conduct research, and provide treatment procedures.¹³ That is to say, the Declaration establishes not only personal requirements for subjects of the obligation to maintain medical secrecy, but also requirements for the technical ability of specialized institutions to prevent the possibility of its disclosure.

As can be seen from the norms of international legal acts, medical secrecy is not limited in time. Even after the death of the patient, the respective

¹³ Declaration on the Policy on Ensuring the Rights of the Patient in Europe adopted by the European Conference on Patient Rights, Amsterdam, Netherlands (Mar. 1994), *available at* https://med.sumdu.edu.ua/images/content/doctors/Deontology/Patients_rights_WHO.pdf.

subjects still have the obligation to preserve it. This international principle is also reflected in the national Code of Ethics of the Doctor of Ukraine dated September 27, 2009, which notes:

Every patient has the right to keep personal secrets. The doctor, as well as other persons involved in the provision of medical care, are obliged to keep doctor's secrecy even after the death of the patient, as well as the fact of seeking medical help, unless otherwise ordered by the patient or if this disease does not threaten his relatives and society.¹⁴

The practical guide “Human Rights in the Sphere of Health” notes that there is an opinion about the absolute nature of medical secrecy, including after the death of a citizen. The legislator regulates this issue only in the aspect of consolidation in part four of Art. 285 of the Civil Code of Ukraine and part five of Art. 39-1 of the Law of Ukraine “Fundamentals of Ukrainian Legislation on Health Care” the right of

¹⁴ Code of Ethics of a Doctor of Ukraine, Adopted and signed by the All-Ukrainian Congress of Medical Organizations and the 10th Congress of the All-Ukrainian Medical Society, Yevpatoria (Sep. 27, 2009), available at <https://zakon.rada.gov.ua/rada/show/n0001748-09>.

family members or other individuals authorized by them, in the event of the patient's death, to be present at the study of the causes of his death and get acquainted with the conclusions about the causes of death, as well as the right to appeal these findings to the court. The authors of the manual agree with those researchers who, as an exception, allow the disclosure of the secrecy of the deceased. Such exceptions include the disclosure of information in the interests of: the rehabilitation of a deceased person, but necessarily with the consent of the legal successors, family members, relatives, heirs of the deceased, and protection of the rights of family members, since they have the right, in particular, to compensation for moral harm, etc. Interested persons requiring information must properly justify the need to obtain it.¹⁵ This problem deserves attention, because if it becomes necessary to obtain data

¹⁵ I. BERN, T. EZER, J. COHEN, J. OVERALL, & I. SENYUTA, *Medicine and Law, HUMAN RIGHTS IN THE SPHERE OF PROTECTION: A PRACTICAL GUIDE / FOR THE SCIENCE* (I. SENYUTA, 2012), AT 552, available at <http://medicallaw.org.ua/vydavnytstvo/praktychnyi-posibnyk-prava-liudyny-u-sferi-okhorony-zdorovia/6-prava-ta-obovjazki-pacijentiv-za-zakonodavstvom-ukrajini/61-prava-pacientsiv/616-pravo-na-privatnist-i-konfidentiinist/>.

constituting a medical secrecy after the death of a person, one must clearly understand the subject composition of the right to receive such information and the conditions under which such a right can be exercised. Unfortunately, national legislation does not provide for a clear procedure for disclosing medical secrecy after the death of a person, which indicates the need for the legislator to resolve this issue.

An important aspect of the existence of any obligation is responsibility for its violation, since without this such a rule loses its practical effectiveness. Therefore, the Law of Ukraine “Fundamentals of Ukrainian Legislation on Health Care” provides that persons guilty of violating the legislation on health care bear civil, administrative, or criminal liability in accordance with the law.¹⁶ Since the norms on the right to secrecy about the state of health and doctor’s secrecy relate to the legislation

¹⁶ Fundamentals of the Legislation of Ukraine on Health Care: Law of Ukraine of November 19, 1992 No. 2801-XII. Information of the Verkhovna Rada of Ukraine № 4 (1993) at 19, *available at* <https://zakon.rada.gov.ua/laws/show/2801-12#n551> (June 19, 2022).

on health care, it can be concluded that the legislator has fixed three exclusive possible types of liability for their violation. In fact, it is possible to apply two types of liability: criminal and civil.

The Criminal Code of Ukraine dated April 5, 2001 No. 2341-III contains two articles concerning the issues of disclosure of information constituting doctor's secrecy. First, is Art. 132, which establishes criminal liability for the disclosure by an official of a medical institution, an auxiliary worker who arbitrarily obtained information, or a medical worker of information about a medical examination of a person to identify infection with the human immunodeficiency virus or other incurable infectious disease dangerous to human life, or acquired immunodeficiency syndrome (AIDS) and its results, which became known to them in connection with the performance of official or professional duties.¹⁷ Vyacheslav Pushin notes in this regard that the

¹⁷ Criminal Code of Ukraine, No. 2341-III, April 5, 2001. Information of the Verkhovna Rada of Ukraine, № 25-26 (2001), at 131, available at <http://zakon3.rada.gov.ua/laws/show/2341-14> (June 20, 2022).

disclosure of information means that a person who is obliged to keep the relevant information in secret illegally acquaints unauthorized persons with it or, by his/her behavior, creates conditions that provide unauthorized persons with the opportunity to familiarize themselves with the relevant information.¹⁸ The methods of disclosure of information may be different, however, for the qualification of an offense committed under Art. 132 of the Criminal Code of Ukraine, these methods do not affect it: information in conversations, provision of documents containing relevant information to an extraneous person, careless storage or loss of such documents, etc.¹⁹ In addition, according to Art. 15 of the Law of Ukraine “On combating the spread of diseases caused by the human immunodeficiency virus (HIV), and the legal and social protection of people living with HIV” dated December 12, 1991

¹⁸ *Infra* note.

¹⁹ Vyacheslav Pushin, Clarification of the Consequences of Disclosing Medical Secrecy, Ukrainian Helsinki Human Rights Union (Sep. 12, 2018), *available at* [https://helsinki.org.ua/articles/roz-yasnennya-schodo-naslidkiv-nezakonnoho-rozholoshennya-likarskoji-tajemnytsi-lzhv/#:-:~:text.](https://helsinki.org.ua/articles/roz-yasnennya-schodo-naslidkiv-nezakonnoho-rozholoshennya-likarskoji-tajemnytsi-lzhv/#:-:~:text=)

No. 1972-XII, people living with HIV have the right to compensation for harm associated with the restriction their rights due to disclosure or revelation of information about their positive HIV status.²⁰ That is to say, thus, the legislator separately notes the right to medical secrecy of people living with HIV, and the possibility of compensation for harm for its violation. This specification is connected with the state's increased attention to the spread of HIV in Ukraine and the problems of people living with HIV, as well as the existence of special rules regarding the possibility of disclosing information about a person's positive HIV status.

Another article establishing criminal liability for violation of doctor's secrecy is Art. 145 of the Criminal Code of Ukraine "Illegal disclosure of doctor's secrecy." It notes that liability arises for the deliberate disclosure of doctor's secrecy by a person

²⁰ On Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV), and Legal and Social Protection of People Living with HIV: Law of Ukraine, No. 1972-XII, December 12, 1991. Information of the Verkhovna Rada of Ukraine No. 11 (1992), at 152, available at <https://zakon.rada.gov.ua/laws/show/1972-12> (June 20, 2022).

to whom it became known in connection with the performance of professional or official duties, if such an act entailed serious consequences.²¹ As noted in the Scientific and Practical Commentary of the Criminal Code of Ukraine, the disclosure of doctor's secrecy is expressed in the illegal communication of this information to another person (persons). Severe consequences are a mandatory sign of the objective side. A causal relationship must be established between the severe consequences and the disclosure of medical secrecy. The subjective side of the crime is expressed in intent. Only careless guilt (criminal self-confidence or criminal negligence) is possible to serious consequences.

The subject of the crime is a person to whom this information became known in connection with the performance of professional (doctor, pharmacist, nurse, paramedic, etc.) or official duties (chief physician, head of department, etc.). Other citizens

²¹ Criminal Code of Ukraine, No. 2341-III, April 5, 2001. Information of the Verkhovna Rada of Ukraine, № 25-26 (2001), at 131, *available at* <http://zakon3.rada.gov.ua/laws/show/2341-14> (June 20, 2022).

to whom this information became known not in connection with the performance of their professional or official duties, but from other sources, cannot be the subject of this crime.²² The composition of this crime gives grounds to draw a logical conclusion about the existence of problems with the public law aspect of responsibility for the illegal disclosure of doctor's secrecy. Firstly, these are the problems of the subject composition, since this crime can only be committed by a special subject, however, neither criminal nor administrative legislation contains rules on the responsibility of other persons who illegally disclosed information constituting a doctor's secrecy. The inability to bring a non-specialist subject to criminal or administrative responsibility is a factor that worsens the situation of the victim and limits his ability to achieve fair satisfaction of the violated right. Secondly, it is the obligatory occurrence of severe consequences and a

²² CRIMINAL CODE OF UKRAINE, SCIENTIFIC AND PRACTICAL COMMENTARY: IN 2 VOLUMES, SUPPLEMENT (V. YA. TATSIYA, V. P. PSHONKY, V. I. BORYSOVA, V. I. TYUTYUGINA, 5TH ED., 2013). VOLUME 2: SPECIAL PART, (Yu. V. Baulin, V. I. Borisov, V. I. Tyutyugin, et al., 2013) AT 1040.

causal relationship between the action and the effect. Severe consequences are not a clearly defined concept; therefore, each specific case requires their separate assessment, reinforcing the role of the subjectivity of the court, which does not comply with the principle of legal certainty as an integral element of the rule of law. In addition, the very necessity of mandatory severe consequences as part of this crime is called into question by the author, since in order to ensure real protection of the rights of patients by the state, the very fact of disclosing information constituting medical secrecy must be subject to public liability.²³ For this, it is necessary either to exclude from Art. 145 of the Criminal Code of Ukraine, the requirement for mandatory severe consequences, or to supplement the Code of Ukraine on Administrative Offenses of December 7, 1984 No. 8073-X with a new article, where such consequences will not be provided. The author is inclined to the second option and considers it appropriate to expand the subject composition of the

²³ See *supra* note 19.

relevant administrative offense, in contrast to Art. 145 of the Criminal Code of Ukraine, setting out the content of the new article in the following edition: “Illegal disclosure of medical secrecy by a person who became aware of it in connection with the performance of professional, official duties or from other sources.”²⁴

The issue of legislation governing public liability for the disclosure of information constituting a medical secrecy, respectively, cannot but be reflected in judicial practice. In fact, in the entire history of independent Ukraine, only isolated cases can be counted when people were actually brought to criminal responsibility under Art. 132, 145 of the Criminal Code of Ukraine, although this problem has been and remains relevant. This was done for the first time only in 2013. On January 22, 2013, the Central District Court of the city of Simferopol convicted a medical worker of the “Yalinka” orphanage for disclosing the child’s HIV status. By a court verdict, the guilty person was deprived of the right to practice

²⁴ *Supra* note 19.

medicine and was obliged to pay a fine.²⁵ T. Bordunis, the lawyer of the injured party, then expressed the hope that this precedent “will help change people’s minds and teach doctors to be silent.”²⁶ However, unfortunately, there have been no changes. According to the Office of the Prosecutor General, from January 2017 to April 2021, under Art. 132, 145 of the Criminal Code of Ukraine, only 53 criminal proceedings were registered. Of these, 22 were closed on the basis of paragraphs one, two, four, six, 9-1 Part 1 Art. 284 Code of Criminal Procedure of Ukraine.²⁷ According to the State Judicial Administration, in 2018 through 2020, not a single sentence was issued under Art.

²⁵ *For the First Time in Ukraine, a Doctor Was Punished for Disclosing an HIV Diagnosis*, Grechka, February 22, 2013, available at <https://gre4ka.info/suspilstvo/2429-vpershe-v-ukraini-medyk-pokaraly-za-rozholoshennia-diahnozu-vil>.

²⁶ *This Case Will Teach Doctors to Keep Quiet*, February 21, 2013, available at <https://m.day.kyiv.ua/uk/article/cuspilstvo/cey-vipadok-navchit-likariv-movchati>.

²⁷ Response to I.M. Shkarivska’s Request Regarding the Provision of Information, Office of the General Prosecutor, May 11, 2021, available at https://dostup.pravda.com.ua/request/86063/response/242090/attach/3/11...pdf?cookie_passthrough=1.

132, 145 of the Criminal Code of Ukraine.²⁸ Such statistics are an indicator of the ineffectiveness of the application of the existing norms of criminal law in the mechanism for protecting the rights of patients, therefore, as noted, it is necessary either to amend the Criminal Code of Ukraine or add a new article to the Code of Administrative Offenses.

The situation is somewhat better with the possibility of bringing the perpetrator to liability in civil proceedings due to a violation of the right of a person to the secret of health, provided for in Art. 286 of the Civil Code of Ukraine. This is due, among other things, to the existence of relevant practice of the Cassation Civil Court within the Supreme Court. This fact is important for the formation of a unified, systematic approach to protecting the rights of patients in court, since, according to Part six of Art. 13 of the Law of Ukraine “On the judiciary and the

²⁸ Regarding Consideration of the Request Dated May 2, 2021 of I. M. Shkarivska, State Judicial Administration, Response, May 18, 2021, *available at* https://dostup.pravda.com.ua/request/86063/response/271909/attach/3/008.pdf?cookie_passthrough=1.

status of judges” dated June 2, 2016 No. 1402-VIII, the conclusions on the application of the rules of law set forth in the decisions of the Supreme Court are taken into account by other courts when applying such rules of law.²⁹ In this context, the landmark legal position of the Supreme Court as part of the panel of judges of the Third Judicial Chamber of the Civil Court of Cassation dated December 4, 2019 in case No. 760/8719/17 is, where it was noted that health information is personal data, their collection could be only with the consent of the person, except as otherwise provided by law. That is to say, it is prohibited not only to collect, but also to store, use and distribute confidential information about a person without his/her prior consent, except in cases specified by law, and only in the interests of national security, economic well-being, and human rights and freedoms. Therefore, the Supreme Court noted that the collection, storage, dissemination and other types

²⁹ On the Judicial System and the Status of Judges: Law of Ukraine, No. 1402-VIII, June 2, 2016. Information of the Verkhovna Rada of Ukraine, No. 31 (2016), at 54, *available at* <https://zakon.rada.gov.ua/laws/show/1402-19> (*last visited* June 20, 2022).

of processing of such information fall under the scope of Article Eight of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.³⁰ It stipulates that everyone has the right to respect for their private and family life, their housing and correspondence. Public authorities may not interfere with the exercise of this right, except when the interference is in accordance with the law and is necessary in a democratic society in the interests of the national and public security or economic well-being of the country, for the prevention of riot or crime, for the protection of health or morals, or for the protection of rights and freedoms of other persons.³¹

The Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights (ECHR) are the source of law in Ukraine and should be applied

³⁰ Resolution of the Supreme Court in Case No. 760/8719/17 (Dec. 4, 2019), *available at* <https://zakononline.com.ua/court-decisions/show/86162369>.

³¹ Convention on the Protection of Human Rights and Fundamental Freedoms, International Document, November 4, 1950, *available at* http://zakon2.rada.gov.ua/laws/show/995_004.

by the courts when considering cases in accordance with Art. 17 of the Law of Ukraine “On the execution of decisions and the application of the practice of the European Court of Human Rights” dated February 23, 2006 No. 3477-IV.³² An important practice of the ECHR on the institution of medical secrecy is, for example, the case “Z v. Finland,” in which the court emphasized that the protection of personal data, not only medical data, is extremely important for a person to exercise his right to respect for private and family life, guaranteed by Article Eight Convention for the Protection of Human Rights and Fundamental Freedoms. Respect for the confidentiality of information about the state of one’s health is an integral principle of the legal systems of the Member States to this Convention. Decisive is not only respect for the medical secrecy of the patient, but also ensuring his confidence in the medical profession

³² On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights: Law of Ukraine, No. 3477-IV (February 23, 2006). Information of the Verkhovna Rada of Ukraine, No. 30 (2006) *available at* <https://zakon.rada.gov.ua/laws/show/3477-15> (*last visited* June 20, 2022) at 260.

and medical services in general. Without such protection, individuals in need of medical care may be deterred from providing personal and intimate information that may be necessary to receive appropriate treatment, as well as from seeking such care and thus exposing themselves and their health, and in case of infectious disease and public health, to danger. Thus, native law should provide sufficient safeguards to prevent the transfer or disclosure of medical secrecy, which may be contrary to the provisions of Article Eight of the Convention for the Protection of Human Rights and Fundamental Freedoms.³³ That is to say, we see that both national judicial practice and the practice of the ECHR emphasize the importance of the existence of the institution of medical secrecy in the context of protecting the rights of individuals to secrecy about the state of health, respect for private and family life, which can only be realized by imposing on medical

³³ Case Z v. Finland, Decision of the European Court of Human Rights, Strasbourg, France, January 25, 1997, *at available* http://medicallaw.org.ua/fileadmin/user_upload/pdf/Z_against_Finland.pdf.

professionals and other persons are obliged not to disclose the relevant information, except as provided by law, establish liability for its violation and provide other sufficient guarantees in order to prevent the transfer or disclosure of medical secrecy.

III. CONCLUSIONS

Summing up the above, the author notes the following. Firstly, from the provisions of the Constitution of Ukraine and relevant legislation it clearly follows that information about the state of health of an individual is information about the personal and family life of an individual, and therefore is confidential, which establishes special rules for handling such information. Secondly, one of the main problems in the legal analysis of the institution of medical secrecy is the lack of a definition of this term in the legislation and the ambiguity of its understanding among specialized scientists. The Law of Ukraine “Fundamentals of Ukrainian Legislation on Health Care” specifies only the term “doctor’s secrecy.” According to the author,

in general, the use of the term “doctor’s secrecy” by the legislator in relation to the relevant legal relations is not correct enough, since the subject composition of this obligation is not limited only to doctors, but also includes all other medical workers, as well as other persons who, in connection with information covered by the regime of doctor’s secrecy became known in the performance of professional or official duties.

Thirdly, “medical secrecy” is often understood as a synonym for “doctor’s secrecy.” The modern legislative definition of the concept of “doctor’s secrecy” includes only the definition of the obligation of specific subjects, without indicating the corresponding right of the patient. Therefore, the author considers it appropriate to exclude the term "doctor’s secrecy" from the legislation and replace it with the term “medical secrecy,” which will include, on the one hand, the patient’s right to a secret about his health, the fact of seeking medical help, diagnosis, information, obtained during his medical examination, information about the intimate and

family aspects of the patient's life, and on the other hand, the obligation of medical workers and other persons who, in connection with the performance of professional or official duties, became aware of such information not to disclose them, except as provided by law.

Fourth, there are certain legislative problems on the possibility of revealing medical secrecy after the death of a person, since in the event of the need to obtain data that constitutes a medical secrecy in such a situation, one must clearly understand the subject composition of the right to obtain such information and conditions under which such right can be realized. Unfortunately, so far, a clear procedure for revealing medical secrecy after the death of a person by national legislation is not provided, which indicates the need to resolve this issue by the legislator. Fifthly, after analyzing the problems of public liability for the disclosure of information constituting a doctor's secrecy, the author came to the conclusion that it should either be excluded from the composition of the criminal offense under Art.

145 of the Criminal Code of Ukraine, the requirement for mandatory severe consequences, or supplement the Code of Ukraine on Administrative Offenses with a new article, where such consequences will not be provided. The author is inclined to the second option and considers it appropriate to also expand the subject composition of the relevant administrative offense, in contrast to the current edition of Art. 145 of the Criminal Code of Ukraine, stating the content of the new article as follows: “Illegal disclosure of a medical secrecy by a person who became aware of it in connection with the performance of professional, official duties or from other sources.” Sixthly, we see that both national judicial practice and the practice of the ECHR emphasize the importance of the existence of the institution of medical secrecy in the context of protecting the rights of individuals to a secret about their state of health, respect for private and family life, which can only be realized by imposing on medical professionals and other persons of the obligation not to disclose relevant information,

except as provided by law, establish liability for its violation and provide other sufficient guarantees in order to prevent the transfer or disclosure of medical secrecy.

BOOK REVIEW ABOUT AN ACTIVIST'S CLOSING

LSD Journal Book Reviewer

Written to match the vigor with which Carmen M. Cusack's *Deer Jhonn* stands for animal welfare, Pamela Anderson doodles and calls in *Love, Pamela*, the sign-off for this icon. She addresses death, including her own, crime, regret, marriage, violence, rewilding, sexual activity, and departure from standards.

Ordered liberty found here however scant. Her lucid tread balls, an exit. She mentions dangerous things claiming no right. Plus, some cannot be remembered. Loftier works encouraging readership, such as Marcel Proust and Sigmund Freud, callout to a hero. No one hears Pamela the same. This book may not be for you, but it may be for someone else.

Love, Pamela dares to go where no one else would. Yet, the book lacks intellectual capacity; therefor, smells like *Playboy*. When considering sale

LSD Journal Book Reviewer

or resale value, that fair weight—air freshener, to lave—should be given. It would not *be* robbery of authorship. Therein, deep exploration of boundaries shall receive no commemorative value and therefore stake.

Waxing and poetic, but without rhyme or reason, is like a letter ripped from the pages of a journal, memoir, or confession. Bobbing through the jots, the best part of *Love, Pamela* is the materials, which are standard, soft paper and cover, like velvet. In Canada, the price is \$37.00.

**LOOK USE THE FOURTH:
FOUNDING FATHERS' FOURTH
AMENDMENT RIGHT
COLLECTIVELY OR SOLO TO BE
"SECURE IN THEIR PERSONS,
HOUSES, PAPERS, AND EFFECTS"¹**

Carmen M. Cusack

I. INTRODUCTION

A. Background and Tale

Football quarterback Tom Brady played for two decades in a town called Boston.² There, a

¹ U.S. CONST. amend. IV. *E.g.*, STAR WARS: EPISODE IV A NEW HOPE (1977); Alisdair Hodgson, "Every Wilhelm Scream in the Star Wars Saga," WhatCulture (Nov. 22, 2019), <https://whatculture.com/film/every-wilhelm-scream-in-the-star-wars-saga>.

² *See*, *Stanford v. Texas*, 379 U.S.476 (1965).

The word 'books' in the context of a phrase like 'books and records' has, of course, a quite different meaning. A 'book' which is no more than a ledger of an unlawful enterprise thus might stand on a quite different constitutional footing from the books involved in the present case.

See Marron v. United States, 275 U.S. 192, 198-199.

Id. at n. 16. *Tom Brady Searched by Cops -- 968 Times!*, TMZ, May 6, 2009, <https://www.tMZ.com/2009/05/06/tom-brady-searched-by-cops-968-times/>.

revolutionary town, his rights were violated.³ Stories swirl about how many times.⁴ At least one account says nearly 1,000 times at a single police station.⁵

It only took 968 questionable criminal background checks -- but at least law enforcement officials in Massachusetts know **Tom Brady** is clean....Authorities are investigating to see who ran the searches and to find out if they were all warranted -- but 968 searches on a guy as flawless as Tom Brady seems a bit excessive to us...⁶

Brady was not the only person violated by the corrupt state agents.⁷ He has also been violated by private organizations, such as those searching bags and pants pockets.⁸ This is a common problem in America.⁹

³ *Tom Brady Searched by Cops -- 968 Times!*, <https://www.tnz.com/2009/05/06/tom-brady-searched-by-cops-968-times/>.

⁴ *Id.* "Jar Jar Binks Biography Gallery," StarWars.com.

⁵ *Tom Brady Searched by Cops -- 968 Times!*, <https://www.tnz.com/2009/05/06/tom-brady-searched-by-cops-968-times/>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

The media’s framing of the issue, “questionable” searches, seems like it is asking, “Does the government comply with the spirit of the Fourth Amendment?”¹⁰ The answer overall is “no.”¹¹ The proper question is “How can the government comply with the directive of the Fourth Amendment?”¹² The answer is by “safeguarding” “freedom.”¹³ This Article examines the spirit, history, and letter of the law.¹⁴

B. Essay Map

The Fourth Amendment is discussed in this Article.¹⁵ Section I introduced the material with a tale about an abuse of the Fourth Amendment.¹⁶

¹⁰ *Id.* U.S. CONST. amend. IV.

¹¹ *Tom Brady Searched by Cops -- 968 Times!*, <https://www.tnz.com/2009/05/06/tom-brady-searched-by-cops-968-times/>. U.S. CONST. amend. IV.

¹² *Tom Brady Searched by Cops -- 968 Times!*, <https://www.tnz.com/2009/05/06/tom-brady-searched-by-cops-968-times/>. U.S. CONST. amend. IV.

¹³ *Stanford v. Texas*, 379 U.S.476, 485 (1965).

¹⁴ *See infra*.

¹⁵ U.S. CONST. amend. IV.

¹⁶ *Id. See, Pennsylvania v. Nelson*, 350 U.S. 497 (1956); *Aguilar v. Texas*, 378 U.S. 108 (1964); *Marcus v. Search Warrant*, 367 U.S. 717, 724-729 (1961); *Frank v. Maryland*, 359 U.S.

Section II puts forth the law in the Fourth Amendment and in *Stanford v. Texas*.¹⁷ Section III analyzes violations of the law to conclude in Section IV that the government is not “safeguarding” “freedom,” yet is required to follow the law.¹⁸

II. FOURTH AMENDMENT AND *STANFORD V. TEXAS*

A. Fourth Amendment

The United States Constitution includes a Fourth Amendment.¹⁹ Congress states:

Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation,

360, 363-366, 376-377 (1959) (dissenting opinion); and *Boyd v. United States*, 116 U.S. 616 (1886).

¹⁷ U.S. CONST. amend. IV. *Stanford*, 379 U.S.476, 485 (1965).

¹⁸ *Stanford*, 379 U.S.476, 485, n. 6 (1965). *See also* FRED S. SIEBERT, FREEDOM OF THE PRESS IN ENGLAND, 1476-1776 (1952), AT 83, 85-86, 97.

¹⁹ U.S. CONST. amend. IV.

and particularly describing the place to be searched, and the persons or things to be seized.²⁰

This is the search and seizure rule.²¹

B. *Stanford v. Texas*²²

Stanford v. Texas explains the Fourth Amendment.²³ In San Antonio on December 27, 1963, Texas law enforcement executed a magistrate's search warrant.²⁴ During a five hour search of a home, they seized approximately 2,000 books, papers, and pamphlets.²⁵ The issue was whether the search and seizure were constitutional.²⁶ Under section nine of Article 6889-3A of the Revised

²⁰ *Id.* "Search and Seizure: Amdt4.2 Historical Background on Fourth Amendment," Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt4-2/ALDE_00013706/.

²¹ U.S. CONST. amend. IV.

²² *Stanford*, 379 U.S. 476. U.S. CONST. amend. IV.

²³ *Stanford*, 379 U.S. 476, 477.

²⁴ *Id.* City of San Antonio, "Contact the Mayor," <https://www.sanantonio.gov/Mayor/About/Contact?sendto=Mayor>. Treye Green, *Clay Aiken's Baby's Mother Jaymes Foster Angry about His Lack of Involvement in Son's Life: Report*, INT'L BUS. TIMES (July 8, 2014), <https://www.ibtimes.com/clay-aikens-babys-mother-jaymes-foster-angry-about-his-lack-involvement-sons-life-report-1622036>.

²⁵ *Stanford*, 379 U.S. 476.

²⁶ *Id.*

Civil Statutes of Texas, the Suppression Act, enacted in 1955, the Communist Party was outlawed and individual criminal offenses were punishable by a term of imprisonment of up to 20 years.²⁷ The Fourth Amendment trumped.²⁸

Citing *Steele v. United States No. 1*, this Court found that for that Court “[t]o hold otherwise would be false to the terms of the Fourth Amendment, false to its meaning, and false to its history.”²⁹

Two centuries have passed since the historic decision in Entick v. Carrington almost to the very day. The world has greatly changed, and the voice of nonconformity now sometimes speaks a tongue which Lord Camden might find hard to understand. But the Fourth and Fourteenth Amendments guarantee to John Stanford that no official of the State shall ransack his home and seize his

²⁷ *Stanford*, 379 U.S. 476, 486 n. 1 (citing Art. 6889-3 Tex. Rev. Civ. Stat. (1951) Texas Communist Control Law). Communist individuals and organizations failing to register with the Texas Department of Public Safety were guilty and punishable.

²⁸ U.S. CONST. amend. IV. “Final Score - Bucs Lose 9-0 New Orleans Saints in Week 15,” *Buccaneers*, (Dec. 19, 2021), <https://www.buccaneers.com/news/rapid-reaction>; like poet laureate Brady/dubbing a poetic score/before the masses. Ken Berry, “Alien Marriage,” *MAMA’S FAMILY* (1983).

²⁹ *Stanford*, 379 U.S. 476, 486 (citing *Steele v. United States No. 1*, 267 U.S. 498, 504 (1925)).

books and papers under the unbridled authority of a general warrant—no less than the law 200 years ago shielded John Entick from the messengers of the [k]ing.³⁰

The nation was founded on individuals’ familiarity with freedom from search and seizure.³¹ The public has “considered it” to be “the true and ultimate expression of constitutional law propositions” “in the minds of those who framed the Fourth Amendment to the Constitution.”³²

Analyses are to “reflect the teachings” “related” to “safeguarding” “freedom.”³³

As MR. JUSTICE DOUGLAS has put it, ‘The commands of our First Amendment (as well as the prohibitions of the Fourth and the Fifth) reflect the teachings of *Entick v. Carrington*.... These three amendments are indeed closely related,

³⁰ *Id.* Entick v. Carrington, EWHC KB J98 (1765).

³¹ *Stanford*, 379 U.S.476, n. 13 (1965) (citing *Boyd*, 116 U.S. 616). U.S. CONST. amend. X.

³² *Boyd*, 116 U.S. 616, 626-627. U.S. CONST. amend. IX.

³³ See *Marcus*, 367 U.S. 717, 731. *Stanford*, 379 U.S. 476, 484-485. Abe Lincoln’s Fido and Jip may have the same rights as Mary Todd. Abraham Lincoln Birthplace, National Historical Park, Knob Creek, Kentucky, <https://www.nps.gov/abli/planyourvisit/lincoln-pets.htm>. Human rights can be individual rights. *Id.* U.S. CONST. amend. X. Terrorists do not have individual, corporate, or group rights. *Id.*

safeguarding not only privacy and protection against self-incrimination but ‘conscience and human dignity and freedom of expression as well.’ *Frank v. Maryland*, 359 U. S. 360, 376 (dissenting opinion).³⁴

In conclusion, “the protection of those freedoms” is “underscored” by fair application.³⁵ “In short, what this history indispensably teaches is that the constitutional requirement...is to be accorded the most scrupulous exactitude.”³⁶ “No less a standard could be faithful.”³⁷

³⁴ *Stanford*, 379 U.S. 476, 485. U.S. CONST. amend. I. U.S. CONST. amend. IV. U.S. CONST. amend. V. Carrington, EWHC KB J98.

³⁵ *Id.*

³⁶ See *Marcus*, 367 U.S. 717; *A Quantity of Books v. Kansas*, 378 U.S. 205 (1964). *Stanford*, 379 U.S. 476, 485. U.S. CONST. amend. IX.

³⁷ *Stanford*, 379 U.S. 476, 485 (discussing the First, Fourth, and Fifth Amendments). U.S. CONST. amend. I. U.S. CONST. amend. IV. U.S. CONST. amend. V.

III. ANALYSIS

The rule is exact.³⁸ Freedom is to be protected.³⁹ The Fourth Amendment of the United States Constitution prohibits unreasonable search and seizure.⁴⁰ Policies and laws that are overbroad do not comply with the Fourth Amendment.⁴¹

The principle underlying the Fourth Amendment is that “each man’s home is his castle.”⁴² The Fourth Amendment was written “directly in response to

³⁸ *But see, Weeks v. United States*, 232 U.S. 383 (1914); *United States v. Kaplan*, 16 F. 2d 802 (1926). Christina M. Cabanillas, *General Search and Seizure Principles*, Assistant U.S. Attorney’s Office, District of Arizona 1, New Mexico District Attorney Association (NMDAA), Spring Conference (Apr. 24, 2019), www.nmdas.com/aoda/wp-content/uploads/2019/04/Cabanillas-General-Search-and-Seizure-Principles-NMDAA-Spring-Conference-April-2019-Final-Combined.pdf; Wayne D. Holly, “*The Fourth Amendment Hangs in the Balance: Resurrecting the Warrant Requirement through Strict Scrutiny*,” 13 NYLS J Human Rights 3 (1997); *State v. Neal*, 142 N.M. 176 (2007).

³⁹ *Holly*, 13 NYLS J Human Rights 3 (1997). Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349 (1974) (“For clarity and consistency, the law of the Fourth Amendment is not the Supreme Court’s most successful product.”).

⁴⁰ Carmen M. Cusack, *Blind Rhyme: The Reasonable Person Standard Violates the First Amendment*, 19 J. L. & SOC. DEVIANCE 3 (2020).

⁴¹ U.S. CONST. amend. IV.

⁴² Tom Head & Robert Longley (updated), *The Fourth Amendment: Text, Origins, and Meaning Protection from Unreasonable Search and Seizure*, ThoughtCo., July 31, 2019, <https://www.thoughtco.com/the-fourth-amendment-721515>.

British general warrants, called [w]rits of [a]ssistance, in which the Crown would grant overarching, non-specific search powers” to enforcers.⁴³

Through [w]rits of [a]ssistance, officials were free to search virtually any home they liked, at any time they liked, for any reason they liked or for no reason at all. Since some of the founding fathers had been smugglers in England, this was an especially unpopular concept in the colonies. Clearly, the framers of the Bill of Rights considered such colonial-era searches to be ‘unreasonable.’⁴⁴

Law enforcement is required to comply with this principle, the spirit of the law.

Few exceptions “reflect” the founders’ understanding of the Fourth Amendment and the guarantees.⁴⁵ Americans’ freedom from search and seizure is protected.⁴⁶

Informed by common law practices, the Fourth Amendment protects the full

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Stanford*, 379 U.S. 476, 485.

⁴⁶ *Id.*

enjoyment of the rights of personal security, personal liberty, and private property by prohibiting unreasonable searches and seizures. In particular, the Fourth Amendment provides that warrants must be supported by probable cause and that the person to be seized, the place to be searched, and the evidence to be sought is specified in the warrant. The Supreme Court, however, has interpreted the Fourth Amendment to allow exceptions to the warrant requirement.⁴⁷

A known exception is raised by terrorists against the United States in the War on Terror and fighters against the country in the War on Drugs, who lack due process.⁴⁸

⁴⁷ “Search and Seizure: Amdt4.1 Overview of Fourth Amendment,” Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt4-1/ALDE_0000055/. See U.S. CONST. amend. IV. JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1902 (1833). See e.g., “Searches and Seizures,” CONSTITUTION OF THE STATE OF FLORIDA § 12 (1968), <https://www.flsenate.gov/Laws/Constitution#A1S12>. U.S. CONST. amend. XI. DECLARATION OF INDEPENDENCE (1776).

⁴⁸ U.S. CONST. amend. V.

A congressional website demonstrates the “idea that freedom from unreasonable searches and seizures is a fundamental right.”⁴⁹

Few provisions of the Bill of Rights grew so directly out of the colonial experience as the Fourth Amendment, which protects against the government’s use of writs of assistance....The idea that freedom from unreasonable searches and seizures is a fundamental right had been a long-standing tenet of English political thought. Every man’s house is his castle was a celebrated maxim in England, as demonstrated in the 1603 *Semayne’s Case*. A civil case regarding execution of process, *Semayne’s Case* recognized the homeowner’s right to defend his house against unlawful entry, even by the [k]ing’s agents, and the authority of government officers to enter property upon notice in order to arrest or execute the [k]ing’s process.⁵⁰

⁴⁹ “Amdt4.2 Historical Background on Fourth Amendment,” Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt4-2/ALDE_00013706/.
⁵⁰ *Id.* See also *Atkinson v. Gurich*, 248 P. 3d 356 (2011). British rights forbid search and seizure. It is a topos, a literary theme. *United States v. Gervato*, 340 F. Supp. 454 (1972). *Anspach v. United States*, 305 F. 2d 960 (10th Cir.) (1962).

“Landmark” jurisprudence demands that “discretionary power” will not be “given to messengers to search where their suspicions may chance to fall. If such a power is.... delegate[d]..., it certainly may affect....every man..., and is totally subversive of the liberty of the subject.”⁵¹ “Polemical” ideas must receive fair “governmental policies.”⁵²

At common law, “an opinion sweeping in terms” is “subversive of all the comforts of society.”⁵³ Even “those alleged to be criminal in nature contrary to the genius of the law”¹¹ “warrant...a showing of probable cause.”⁵⁴

The Supreme Court has said that *Entick v. Carrington* is a great judgment, one of the landmarks of English liberty, one of the permanent monuments of the British Constitution, and a guide to an

⁵¹ “Amdt4.2 Historical Background on Fourth Amendment,” Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt4-2/ALDE_00013706/. Carrington, EWHC KB J98

⁵² *Id.* Wilkes v. Wood, 98 Eng. 489 (C.P. 1763). “Prohibition on Racing of and Wagering on Greyhounds or Other Dogs,” CONSTITUTION OF THE STATE OF FLORIDA § 32 (1968), <https://www.flsenate.gov/Laws/Constitution#A1S12>.

⁵³ *Id.*

⁵⁴ *Id.*

understanding of what the Framers meant in writing the Fourth Amendment.⁵⁵

Cases discussing search and seizure must “reflect” the founders’ ideas and individuals’ and the public’s freedom under the Fourth Amendment.⁵⁶ “It is these landmark cases, the Court has noted that the battle of individual liberty and privacy was finally won.”⁵⁷

James Madison’s construction of Fourth Amendment guarantees overcomes policies and cases harming Americans, the states, and the United States.⁵⁸ The rule is constant and exceptions are rare.⁵⁹ Colonial smugglers were protected against

⁵⁵ *Stanford v. Texas*, 379 US 476 (1965). “In an opinion...this Court has characterized as a wellspring...the rights now protected by the Fourth Amendment.” *Id.* at 484. “This history was, of course, part of the intellectual matrix within which our own constitutional fabric was shaped.” *Id.* at 484 (citing *Marcus*, 367 U.S. 717, 724). *People v. Gifford*, 325 NE 2d 81 (1975); *The People v. Kimmel*, 34 Ill.2d 578 (1966). *Carrington*, EWHC KB J98.

⁵⁶ *Stanford v. Texas*, 379 US 476, 485.

⁵⁷ “Amdt4.2 Historical Background on Fourth Amendment,” Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt4-2/ALDE_00013706/. Edward DeBlasio, “The Victory,” *DYNASTY* (Sept. 24, 1986).

⁵⁸ “Amdt4.2 Historical Background on Fourth Amendment,” Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt4-2/ALDE_00013706/.

⁵⁹ *Id.* (discussing search incident to arrest).

royalty's writs of assistance to search extending up to six months after the royals' deaths.⁶⁰ "The Fourth Amendment was the founding generation's response to the reviled...and...unrestrained search for evidence of criminal activity."⁶¹ "Our law holds the property of every man so sacred, that no man can set his foot upon his neighbour's [*sic*] close without his leave; if he does he is a trespasser, though he does no damage at all."⁶²

Despite the law inexpert government employees have violated citizens (e.g., data search).⁶³ The

⁶⁰ "Amdt4.2 Historical Background on Fourth Amendment," Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt4-2/ALDE_00013706/.

⁶¹ *Id.* at n. 1 (citing *Riley v. California*, 573 U.S. 373, 403 (2014)). See THE RIGHTS OF THE COLONISTS AND A LIST OF INFRINGEMENTS AND VIOLATIONS OF RIGHTS, 1772 (discussing Samuel Adams). *Id.* at n. 2. 1 B. SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 199, 205–06 (1971).

⁶² 1195 Eng. Rep. 817 (1705). See 35 Coke's Repts. 91a, 77 Eng. Rep. 194 (K.B. 1604); 519 Howell's State Trials 1029, 95 Eng. Rep. 807 (1765); 619 How. St. Tr. 1153, 98 Eng. Rep. 489 (1763); *Wood*, 98 Eng. 489; *Huckle v. Money*, 95 Eng. Rep. 768 (K.B. 1763); 19 Howell's State Trials 1002, 1028, 97 Eng. Rep. 1075 (K.B. 1765).

⁶³ *Contra*, *What Does the Fourth Amendment Mean?*, U.S. Courts, <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does-0>. "An officer may conduct a pat-down of the driver and passengers during a lawful traffic stop; the police need not believe that any occupant of the vehicle is involved in a criminal activity." (citing *Arizona v. Johnson*, 555 U.S. 323 (2009)). *Id.*

government must closely obey the spirit and letter of the law.⁶⁴ Private organizations are not exempted.⁶⁵ Searches are illegal.⁶⁶ They must obey the Fourth Amendment when enforcing security measures (e.g., automated teller machine personal identification number (ATM PIN)).⁶⁷ The following organizations are required to obey the Fourth Amendment: Department of Homeland Security, port authorities, Transportation Security Administration, schools (i.e., state and private universities), banks, stadiums and parks, insurers and lenders, homeowner associations, county libraries, malls and laboratories, airports (e.g., state and federal), and local police.⁶⁸ Abuse is impermissible, therefore constitutional remedies are owed.⁶⁹

⁶⁴ U.S. CONST. amend. IV.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ “Tom Brady Booted after Training in Closed Park, Tampa ...,” TMZ, April 20, 2020, <https://www.tnz.com/2020/04/20/tom-brady-cited-for...> Apr 21, 2020.

⁶⁹ U.S. CONST. amend. IV.

IV. CONCLUSION

In conclusion, the Fourth Amendment must be followed.⁷⁰ “Safeguarding” “freedom” prevents abuses that violate the law.⁷¹ The meaning of the Fourth Amendment is a legal requirement.⁷² Fourth Amendment guarantees protect the home, vehicle, and belongings.⁷³ The law must be upheld;⁷⁴ thus,

⁷⁰ *Id.*

⁷¹ *Stanford v. Texas*, 379 U.S.476, 485 (1965).

⁷² U.S. CONST. amend. IV.

⁷³ *Id.* See “Come a little bit closer. You’re my kind of man, so big and so strong. Come a little bit closer. I’m all alone, and the night is so long.” Jay & The Americans, “Come A Little Bit Closer” (1964), <https://www.youtube.com/watch?v=nRU38XbX6Xw>. *E.g. id.* at 2:24 (*see possibly*, jaguar expression) *id.*

⁷⁴ *Boyd*, 116 US 616.

It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. *Id.* at 635.

United States v. Johnson, 431 F. 2d 441 (5th Circ.) (1970).

Fourteenth Amendment equal protection groups people differently, and animals too, under the Fourth Amendment. U.S. CONST. amend. XIV and *Florida v. Jardines*, 569 U.S. 1 (2013). Threat of fondling, such as during frisk and handcuffing, are impermissible. *See id.*

enforcement is required.⁷⁵ New dicta, policies, and statutes must conform to the Fourth Amendment.⁷⁶

⁷⁵ “Amdt4.2 Historical Background on Fourth Amendment,” Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt4-2/ALDE_00013706/ at n. 18-19 “extending the protection” (citing *Boyd*, 116 U.S. 616). See, *Gouled v. United States*, 255 U.S. 298 (1921) and *Warden v. Hayden*, 387 U.S. 294 (1967), but see *id.* at 303 (“reserving the question whether there are items of evidential value whose very nature precludes them from being the object of a reasonable search and seizure.” “Amdt4.2 Historical Background on Fourth Amendment,” Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt4-2/ALDE_00013706/). Personal space and thoughts are to be free. *Id. Weeks*, 232 U.S. 383, 392; *Carroll v. United States*, 267 U.S. 132, 158 (1925); *Agnello v. United States*, 269 U.S. 20, 30 (1925) (asking “whether...there is to be a rule or a principle” “Amdt4.2 Historical Background on Fourth Amendment,” Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt4-2/ALDE_00013706/). See e.g., *United States v. United States District Court*, 407 U.S. 297, 319–20 (1972)).

⁷⁶ The Immigration and Nationality Act 287(a)(3) and CFR 287 (a)(3).

RAPE MYTH ACCEPTANCE, SOCIAL DOMINANCE ORIENTATION, AND VICTIM BLAMING IN SEXUAL ASSAULT PERPETRATORS

Iqra Saddique¹ and Dr. Shahnila Tariq²

I. OVERVIEW

The study was carried out to explore the relationship between rape myth acceptances, social dominance orientation, and victim blaming in sexual assault perpetrators. It was hypothesized that there is likely to be a positive significant relationship between rape myth acceptance, social dominance orientation, and victim blaming in sexual assault perpetrators. It was also hypothesized that rape myth acceptance and social dominance orientation predicted victim blaming in sexual assault

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perpetrators. Through purposive sampling technique, data was collected from sexual assault perpetrators (N=120) with age range of 18 to 60 years (M=29.46, SD=10.08) from four different jails of Punjab, Pakistan. Belief about rape scale by B.S. Newman and I. Colon,³ translated version by Arshad and Tariq from 2021 of dominance-prestige peer-report scale by J.T. Cheng, J.L. Tracy, and J. Henrich,⁴ and post assault justification scale by Rhiana Wegner, et al.⁵ were used to measure the study variables. After translation of the scales into Urdu, Factor analysis with EFA and CFA used to identify the different factors of the scales. For analysis, Pearson moment correlation, Hierarchical regression analysis and one-way ANOVA was used. The results of the present

³ B.S. Newman & I. Colon, *Beliefs about Rape among College Males: A Revision of the Rape Myth Acceptance Scale*, 28 C. STUDENT J. 10 (1994).

⁴ J.T. Cheng, J.L. Tracy, & J. Henrich, *Pride, Personality, and the Evolutionary Foundations of Human Social Status*, 31 EVOLUTION & HUMAN BEHAV. 334 (2010).

⁵ Rhiana Wegner, Antonia Abbey, Jennifer Pierce, Sheri E. Pegram, & Jacqueline Woerner, *Sexual Assault Perpetrators' Justifications for Their Actions: Relationships to Rape Supportive Attitudes, Incident Characteristics, and Future Perpetration*, 21 VIOLENCE AGAINST WOMEN 1018 (2015).

study found significant positive relationship between rape myth acceptances, social dominance orientation, and victim blaming in sexual assault perpetrators. Rape myth acceptance was a significant predictor of victim blaming while social dominance orientation did not predict victim blaming in sexual assault perpetrator. Significant age difference was also found in victim blaming. Findings of the study will be helpful in decreasing the rape myths and blaming attribution to victim from society and will be helpful in providing psychological interventions to the convicted rape criminals.

II. INTRODUCTION

Rape is common in almost every society but in Pakistan the crime rate is increasing day by day. People get sexually harassed at markets, shops, and other public places.⁶ Mostly sexual assault perpetrators attribute their criminal activities and

⁶ F. Anwar, K. Osterman, & K. Bjorkqvist, *Risk Factors for Sexual Harassment in Public Places*, 8 *TECHNIUM SOC. SCI. J.* 329 (2020).

criminal action to their victims.⁷ A report by the Office for National Statistics in 2015 stated that since 2014, rape cases increased up to 29%. The most common reasons behind not reporting rape cases are attribution of rape responsibility to the victim and accusing victim for this mishap.⁸ Moreover sexual assault perpetrators believe that they are dominant and they have needed to dominate the group which is inferior to them and which is weak to them.⁹ If they do anything against the law, they justify it by saying that it is the victim's fault. This blaming can be mostly seen in the rape cases, where perpetrators blame their victim for sexual assault by pointing out their dressing, way of talking, and provoking

⁷ K.R. Klement, B.J. Sagarin, & J.J. Skowronski, *Accusers Lie and Other Myths: Rape Myth Acceptance Predicts Judgments Made about Accusers and Accused Perpetrators in a Rape Case*, 8 SEX ROLES 16 (2019).

⁸ C.R. Gravelin, M. Biernat, & C.E. Bucher, *Blaming the Victim of Acquaintance Rape: Individual, Situational, and Sociocultural Factors*, 9 FRONT. PSYCHOL. 2422 (2019).

⁹ J.M. Canto, M. Vallejo-Martín, F. Perles, & J. San Martín, *The Influence of Ideological Variables in the Denial of Violence against Women: The Role of Sexism and Social Dominance Orientation in the Spanish Context*, 17 INT'L J. ENVTL. RES. & PUB. HEALTH 4934 (2020).

behavior.¹⁰ The present study aims to investigate the relationship between rape myth acceptance, social dominance orientation, and victim blaming in sexual assault perpetrators.

Rape is described as a forced sex act with a woman or a young girl to whom the perpetrator is not legitimately married.¹¹ According to the Pakistan Penal Code, Act XLV of 1860 section (§) 375/376 rape is defined in following perspectives:

- Sexual intercourse with a female or a young girl coercively without her wish and her consent
- With her consent being acquired because by threatened her of death or hurt
- With the consent of the victim, where the perpetrator knows, that he is not legitimately married to her, however has gotten her assent in light of the fact that after getting the consent the offender will married the victim, in other words the offender get the consent through fraud

¹⁰ Gravelin, Biernat, & Bucher, *Blaming the Victim of Acquaintance Rape*.

¹¹ A. Kamal, I.A. Shaikh, & M.A. Shaikh, *Comparative Analysis of Attitudes and Perceptions about Rape among Male and Female University Students*, 22 J. AYUB M C. ABBOTTABAD 108 (2010).

- Perpetrator took the consent when the victim was under sixteen years of age.¹²

Rape is characterized broadly as vaginal penetration or penetration of anus with any other organ of another person regardless of its severity. It is also defined through Rape Abuse and Incest National Network (RAINN) as sex without consent, the taken form, oral penetration with him or her by a sexual part.¹³

According to M.J. Higdon and others there are many causes of rape.¹⁴ Mostly perpetrators are from a poor parenting style that prompts sexual assault. Parental carelessness is one of the main causes of assault. Poor parental background, parental carelessness affects negatively the moral values of their children. Education is also important in developing the moral values in people. Lack of

¹² Pakistan Penal Code, Act XLV § 375/376 (1860).

¹³ K.D. Kushmider, J.E. Beebe, & L.L. Black, *Rape Myth Acceptance: Implications for Counselor Education Programs*, 7 J. COUNS. PREPARATION & SUPERVISION __ (2015).

¹⁴ M.J. Higdon, *Queer Teens and Legislative Bullies: The Cruel and Invidious Discrimination Behind Heterosexist Statutory Rape Laws*, 42 U.C. DAVIS L. REV. 195 (2008).

education will lead people to engage in violent crimes. Like some other behaviors, sexual violence and assault are considered to be a leaning behavior, which adults mostly learn as children vulnerable to sex. Those who have bad company and live in a social context in which behavior is justified by being violent also became violent towards others. Poverty both affects the risk of becoming a victim and becoming a sexual assault perpetrator.

There are several consequences of rape. Because of rape, a victim may become panicked over a related situation or rape scenario and experience intense fear and nightmares. Rape is assault and a crime that makes a victim mentally and psychologically downtrodden. Aside from the physical and mental ramifications, there are additional socially negative consequences related with the assault victim totally withdrawing himself or herself from society and becoming self-isolated.¹⁵

¹⁵ M.O. Esere, A.I. Idowu, I.A Durosaro, & J.A. Omotosho, *Causes and Consequences of Intimate Partner Rape and Violence: Experiences of Victims in Lagos, Nigeria*, 1 J. AIDS & HIV RES. 001 (2009).

III. PUNISHMENT OF RAPE IN PAKISTAN

An ordinance was passed by the National Assembly to ensure that the crime of rape cases will be addressed in special courts where the victims will be provided speedy trial process and safety for their lives. It was called the Anti-Rape Act, 2020.

A bill was introduced in the Senate in 2020 in which according to Pakistan Penal Code, XLV of 1860, and the Code of Criminal Procedure, V of 1898, those who commit rape will be subject to imprisonment for lifetime with liable fine or will be punished with death. If more than one person involves in rape, everyone will be punished with death or lifetime imprisonment without any parole. This bill was called The Criminal Law (Amendment) Act, 2020.¹⁶

According to § 377, Act XLV of 1860, whoever sexually has intercourse with men, women, or animals will be subject to imprisonment for not less than two years or more than ten years or he will be

¹⁶ The Criminal Law Act, Senate (2020).

punished with lifetime imprisonment with liable fine.¹⁷ Moreover under this section those who sexually have intercourse with a boy, who was under 18 years, will be punished to death or they will be imprisoned for lifetime with liable fine.¹⁸

IV. RAPE MYTH ACCEPTANCE

Rape myth has been characterized as beliefs and attitudes that are mostly untrue but are generally and constantly held by the people. These beliefs lead to denial and legitimize the aggressive nature of males.¹⁹ Rape myths are biased, generalized, or deception-based beliefs about sexual assault, victims as well as perpetrator. Perspectives and beliefs of a man can directly affect the chances of submitting women to rape.²⁰ Rape myths are those beliefs that are held by many people in a society within the

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ P. Crall, & W. Goodfriend, *She Asked for It: Statistics and Predictors of Rape Myth Acceptance*, 22 MOD. PSYCHOL. STUD. 15 (2016).

²⁰ Kamal, Shaikh, & Shaikh, *Comparative Analysis of Attitudes and Perceptions about Rape among Male and Female University Students*.

context of sexual assault. Rape myths are not true, instead these beliefs deny the occurrence of rape by blaming the victim for fabricating the details.²¹

Acknowledgment by men of rape myths, for example their unconfirmed moral and social attitudes, can lead to legitimizing assaulting females by considering them guilty for their own victimization. Another general myth is that a woman entices a man into assaulting her by the manner in which she dresses or that a female cannot be assaulted without wanting to submit. Men accept that women attract men to assault her with her conduct or with assistance of her dressings.²²

In media, women have been portrayed as independent individuals who can solve their own problems. On media, women are shown in a dressing that provokes the sexual behavior of the men.²³ On the other hand, the language which media uses to

²¹ Kushmider, Beebe, & Black, *Rape Myth Acceptance: Implications for Counselor Education Programs*.

²² Kamal, Shaikh, & Shaikh, *Comparative Analysis of Attitudes and Perceptions about Rape among Male and Female University Students*.

²³ K. Van Wormer & L. Berns, *The Impact of Priest Sexual Abuse: Female Survivors' Narratives*, 19 AFFILIA 53 (2004).

portray the victim such as being pretty and flirtatious also reinforces the sexual behavior of the perpetrators as this language shows rape as normal, entrancing, and enjoyable. The idea of rape as an enjoyable act, reinforces the myth that women get pleasure from rape and ask for it.²⁴

V. SOCIAL DOMINANCE

J. Sidanius and F. Pratto introduced the concept of social dominance in humans.²⁵ It comes into use with respect to human social groups that tend to be organized according to group-based social hierarchies in societies that produce economic surplus. Social dominance refers to situations in which an individual or a group dictates or controls others behavior, especially through competition. The social dominance theory finally proposes that the relative counterbalancing of hierarchy-enhancing

²⁴ L.K. Thacker, *Rape Culture, Victim Blaming, and the Role of Media in the Criminal Justice System*, 1 KY J. UNDERGRADUATE SCHOLARSHIP 8 (2017).

²⁵ J. Sidanius, & F. Pratto, *Social Dominance Theory and the Dynamics of Inequality: A Reply to Schmitt, Branscombe, & Kappen and Wilson & Liu*, 42 BRIT. J. SOC. PSYCHOL. 207 (2003).

and hierarchy-attenuating social forces stabilizes group-based inequality.²⁶

VI. SOCIAL DOMINANCE ORIENTATIONS

Social dominance orientation is a build that catches the degree of people's longing for group-based predominance.²⁷ Social dominance orientation is an attitudinal behavior with people of a group that reflects whether a person favors relations to be equivalent in that group, versus one's wishes that one dominates, overwhelms, and is superior to intergroup and other groups.²⁸

Social dominance orientation could be considered as a steady individual distinction impacting a few intergroup beliefs, perspectives, and

²⁶ R. Ligneul, R. Girard, & J.C. Dreher, *Social Brains and Divides: The Interplay between Social Dominance Orientation and the Neural Sensitivity to Hierarchical Ranks*, 7 SCI. REP. 1 (2017).

²⁷ A. Aiello, S. Passini, A. Tesi, D. Morselli, & F. Pratto, *Measuring Support for Intergroup Hierarchies: Assessing the Psychometric Properties of the Italian Social Dominance Orientation Scale*, 26 TPM-TESTING, PSYCHOMETRICS, METHODOLOGY APPLIED PSYCHOL. 373 (2019).

²⁸ A. Magallares, *Right Wing Authoritarianism, Social Dominance Orientation, Controllability of the Weight and Their Relationship with Antifat Attitudes*, 13 UNIVERSITAS PSYCHOLOGICA 771 (2014).

practices.²⁹ Social dominance orientation is a proportion of support for imbalance between groups of people in any society that has assumed the appearance of a focal part in a range of intergroup perspectives, practices, and strategy inclinations.³⁰

VII. VICTIM BLAMING

Blame is more often defined as a misjudgement of a negative act in which one who was innocent was held responsible.³¹ Blaming the victim means, the victim of any negative situation is considered the guilty and responsible for the outcomes.³²

Victim blaming is a misinterpretation of an act which occurs when instead of the perpetrators, the victims are held responsible for the crime that was committed against them. These blames are in a form

²⁹ N. Kteily, A.K. Ho, & J. Sidanius, *Hierarchy in the Mind: The Predictive Power of Social Dominance Orientation across Social Contexts and Domains*, 48 J. EXPERIMENTAL SOC. PSYCHOL. 543 (2012). See J. Sidanius, & F. Pratto, *Social Dominance Theory and the Dynamics of Inequality: A Reply to Schmitt, Branscombe, & Kappen and Wilson & Liu*, 42 BRIT. J. SOC. PSYCHOL. 207 (2003).

³⁰ See *supra* note.

³¹ Gravelin, Biernat, & Bucher, *Blaming the Victim of Acquaintance Rape*.

³² *Id.*

of negative response from society. Victims often face these blames from medical and legal professionals, from the media, and sometimes from their family members and friends circle.

VIII. SUMMARY

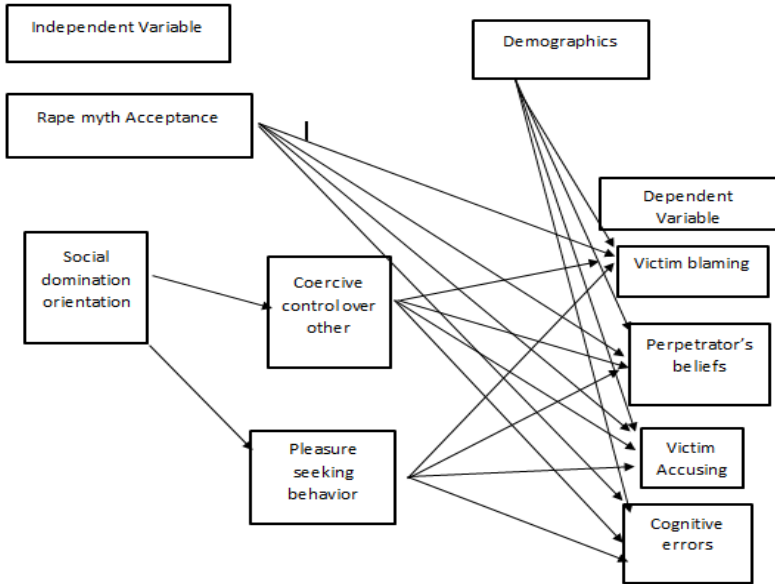
Rape has become very common in all cultures. People held negative beliefs and myths with regard to the occurrence of rape and reputation of the victim. These blames and myths lead to blaming the victim instead of perpetrators. These myths reinforce the actions of sex offenders. Similarly, those people who want to be dominant against others and help their authority over others consider themselves not guilty. They blame their victims for the mishap and accuse them.

IX. PRESENT STUDY

The purpose of the present study was to explore the relationship between rape myth acceptances, social dominance orientation, and victim blaming in

sexual assault perpetrators. The purpose was also to identify rape myth acceptances and social dominance orientation as predictors of victim blaming in sexual assault perpetrators. Based on the previous literature it was hypothesized that there is likely to be a positive relationship between rape myth acceptance, social dominance orientation, and victim blaming in sexual assault perpetrators. It was also hypothesized that rape myth acceptance and social dominance orientation is likely to predict victim blaming in sexual assault perpetrators. Finally, it was hypothesized that there is likely to be a significant difference between types of perpetrators' ages in terms of victim blaming in sexual assault perpetrators.

Figure 1. *Purposed Model of the research*



X. METHODS AND MATERIALS

Correlational research design was used and a sample of (N=120) male sexual assault perpetrators was approached by using purposive sampling technique to collect information from sexual assault perpetrators from four jails of different cities of Punjab, Pakistan.

A. Assessment Measures

1. Consent Form

Informed consent form was given to the participant. They were informed about the purpose of the study. Participants were given the right to leave the study at any time without any penalty.

2. Demographic Information Sheet

A self-constructed demographic information sheet was used to get information about age of the participant, education (Matric, Graduate or above), family system (nuclear, joint, separated), monthly income of guardian etc.

3. Belief about Rape Scale

The belief about rape scale was used to assess the rape myth acceptance in sexual assault perpetrators. This scale developed by Newman and Colon.³³ This scale was a combination of 13 items (item numbers

³³ Newman & Colon, *Beliefs about Rape among College Males*.

two, nine through 19, and 23) from the rape myth acceptance scale developed by 1980, four items (item numbers four, five, six, and 24) from the field (1978) and seven newly constructed items (item numbers one, three, seven, eight, and 20-22) of Newman and Colon.³⁴ The scale had 24 items to measure beliefs about rape and four subscales: rape only happens to women who provoke it (items number one to nine); disbeliefs of rape claims (items number ten to 13); victims responsible for rape (items number 14 to 18); and rape reports as manipulation (items number 19 to 24). Item numbers nine, ten, 11,12, and 13 were reversed coded items. Responses were made on five-point Likert scale (1=most likely, 5=most unlikely). The reliability of the scales was .78.

4. Dominance –Prestige Self-Report Scale

The scale was developed by Cheng, Tracy and Henrich.³⁵ The scale consisted of 17 items. The scale

³⁴ *Id.*

³⁵ Cheng, Tracy, & Henrich, *Pride, Personality, and the Evolutionary Foundations of Human Social Status*.

had two subscales: dominance scale and prestige scale. The translated version of dominance subscale by Arshad and Tariq from 2021 was used in this study. The scale consisted of eight items and item number five was a reverse coded item. The responses ranged from seven-point Likert scale ranges from 1=strongly disagree to 7= strongly agree. The reliability of the scale was .95.

5. Post-assault Justifications Scale

This scale was developed by Wagner. This scale consisted of ten items. The responses were taken on five-point Likert scale that were ranged from 1= not at all to 5=very much. The last question of the scale was rated on five-point scale with response ranging from one (not at all) to five (completely). The overall score was computed through the sum of these items which was ranged from ten to 41. Cronbach's alpha was .73.

B. Procedure

The topic was selected after observing the major social issue and discussed with the supervisor. After presenting the topic in DGC and getting approval, the formal authority letter was taken from the Department of Applied Psychology, University of Management and Technology, Lahore. The required documents were attached with the documents presented to the IG Prison office for formal permission for data collection.

After getting the written approval letter from IG prison office, the permission to use the scales in Urdu language was sought from the concerned authors. The MAPI guidelines were used to translate the scales.³⁶ After translating the scales into Urdu language, sexual assault perpetrators were approached under the strict security of police. Only those perpetrators who can meet the

³⁶ E. DAVIS, M. DAVERN, E. WATERS, R. BOYD, D. REDDHOUGH, A. MACKINNON, & H.K. GRAHAM, CEREBRAL PALSY QUALITY OF LIFE QUESTIONNAIRE FOR ADOLESCENTS (CP QOL-TEEN) MANUAL (2013). Version 2. *Id.*

inclusion/exclusion criteria were approached and they were informed about the purpose of the study. Informed consent was taken from participants and participants were also briefed about how to fill the questionnaires. It took an average of 20-25 minutes for a participant to complete all of the questionnaires. The data was entered and analyzed in SPSS according to the hypotheses once it was collected.

C. Results

The main purpose of this study was to check the relationship between rape myth acceptance, social dominance orientation, and victim blaming in sexual assault perpetrators. After the scales were translated into Urdu language, the obtained data was subjected to statistical analysis. The information was investigated in four steps. In the initial step, factor analysis was used to identify the subscales of social dominance orientation scale and post-assault justification scale in sexual assault perpetrators. In the second step, Descriptive Statistics and Cronbach alpha coefficient of reliability were checked for each

scale. In the third step, Pearson product moment correlation was utilized to check the relationship between rape myth acceptance, social dominance orientation, and victim blaming in sexual assault perpetrators. Hierarchical linear regression analysis was used to determine the predictors of victim blaming in sexual assault perpetrators. In the last step, additional analysis of one-way ANOVA was used to find out the difference in types of age ranges in terms of victim blaming in sexual assault perpetrators.

1. Psychometric Properties of the Scales

The psychometric properties of the scales were checked and showed in table 1.

Table 1. Psychometric Properties of the Scales and Subscales

Scales	M	SD	Range	Cronbach's α
Total of RMA scale	88.60	12.18	24-120	.71
Total of Social dominance orientation	32.95	10.95	8-56	.80
Coercive control over others	21.00	7.97	5-35	.82
Pleasure seeking behavior	11.94	4.56	3-21	.52
Total of Victim blaming	30.72	9.71	10-50	.83
Perpetrators beliefs	11.80	4.40	4-20	.74
Victim accusing	9.76	4.07	3-15	.85
Cognitive errors	9.12	3.59	3-15	.61

Note. M=Mean, SD= Standard Deviation

Table one showed mean and standard deviation of the rape myth acceptance scale, social dominance orientation scale, and victim blaming and its subscales. All the measured scales had a good reliability coefficient pleasure seeking nature and justification of their action subscale. The authoritative nature subscale did not have good reliability, which might be because the perpetrators lived under the authority figures of the jail. In this environment they were never be able to show their pleasure seeking behavior because of the fear of

these authority figures and because they had to change their nature after coming to the jail. The reliability of the justification of their action was also not good, which might be because they were manipulating their answers and trying to seem innocent. They justified themselves because they were highly blaming the victims.

2. Main Analysis

It was hypothesized that rape myth acceptance would positively correlate with victim blaming. It was also hypothesized that there would be a positive association between social dominance orientation and victim blaming. To assess this relationship between these variables Pearson Product Moment Correlation was applied as shown in Table Two.

Table 2. Correlation between Demographic Characteristics, Rape Myth Acceptance, Social Dominance Orientation and Victim Blaming in Sexual Assault Perpetrators

Variable	N	M	SD	1	2	3	4	5	6	7	8	9	10
1. Victim Age	120	19.02	8.86	-	.07	.08	.08	.05	.03	.23*	.27**	.16	.08
2. Time in jail	120	42.66	42.33	-	-	.06	.10	.21*	-.02	-.19*	-.13	-.21*	-.12
3. Total of RMA	120	89.02	11.41	-	-	-	.08	.03	.10	.22*	.21*	.22*	.08
4. Total SDOS	120	34.03	8.57	-	-	-	-	.79***	.87***	.09	-.02	.18*	.06
5. Pleasure seeking behavior	120	11.94	4.56	-	-	-	-	-	.48***	.02	-.11	.14	.02
6. Coercive control over others	120	21.00	7.91	-	-	-	-	-	-	.16	.07	.19*	.12
7. Total VB	120	30.72	9.71	-	-	-	-	-	-	-	.84***	.81***	.74***
8. Perpetrator's beliefs	120	11.80	4.40	-	-	-	-	-	-	-	-	.53***	.44***
9. Victim accusing	120	9.76	4.07	-	-	-	-	-	-	-	-	-	.40***
10. Cognitive errors	120	9.12	3.59	-	-	-	-	-	-	-	-	-	-

Note. RMA = Rape Myth Acceptance, VBS = Victim Blaming scale, SDOS = Social dominance Orientation scale. ***p < 0.001, **p < 0.01, *p < 0.05

Results of Pearson Product Moment Correlation showed that there was positive correlation between age of the victim blaming. Moreover age of the victim was also significantly positively correlated to the perpetrators' beliefs. The results also showed that perpetrators' time in jail was significantly negatively correlated with victim blaming scale. Results also showed that time spent in jail was negatively correlated with victim accusing subscale. The results indicated that rape myth acceptance was positively correlated with victim blaming especially with the perpetrators' beliefs and victim accusing subscales. Those who have more rape myth acceptance blame their victims for assault and held negative beliefs about them. Moreover, the results of the correlation showed that there was a positive relationship between social dominance orientation and victim accusing subscale. The subscale of social dominance orientation, coercive control over others was also positively correlated with victim accusing.

It was also hypothesized that rape myth acceptance and social dominance orientation

predicted victim blaming in sexual assault perpetrators. Hierarchical regression was conducted to determine the predictors of victim blaming in sexual assault perpetrators.

Table 3. Hierarchical Regression Analysis to See the Prediction about Demographic Characteristic and Independent Variables on Victim Blaming
 95% CI for B

Variable	B	LL	UL	SE B	B	R ²	ΔR ²
Step 1						.10	.09**
Constant	28.14***	23.75	32.53	2.20			
Victim age	.26**	.07	.45	.10	.24**		
Time in jail	-.04*	-.09	-.01	.02	-.21*		
Step 2						.17	.12*
Constant	12.01	-3.97	24.05	7.07			
Victim age	.26*	.05	.42	.09	.21*		
Time in jail	-.05*	-.09	-.02	.02	-.22**		
Total RMA	.17*	.03	.33	.07	.21*		
Total SDO	.08	-.09	.26	.09	.08		
PSB	.38	-.45	1.20	.41	.18		
CCO	.42	-1.15	.30	.36	-.40		

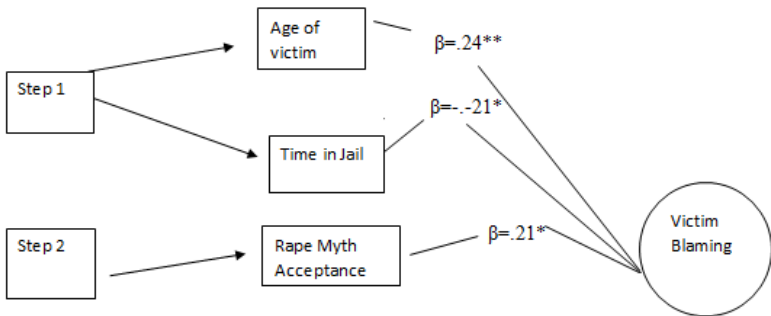
Note. RMA= Rape Myth Acceptance, SDO= social dominance orientation, PSB= pleasure seeking behavior, CCO= coercive control over others: *p<.05, **p<.01, ***p<.001.

Hierarchical regression analysis was used to find out the prediction of demographic characteristics, rape myth acceptance, social dominance orientation, pleasure seeking nature, and coercive control over others or victim. Table in model one, R^2 value is .10 revealed that age of victim and time in jail explained ten percent variance on victim blaming with $F(6.146) = 16.52, p < .01$. The findings revealed that age of victim positively predicted victim blaming ($\beta = .24, p < .01$). Time in jail negatively predicted victim blaming ($\beta = -.21$). In model one, ΔR^2 value is significant at $p < .01$.

In model 2, R^2 value is .17 revealed that rape myth acceptance, social dominance orientation, pleasure seeking behavior, and coercive control over others or victim predicted overall 17% victim blaming $F(3.79) = 8.90, p < 0.01$. Moreover, separately, rape myth acceptance variables have significantly predicted victim blaming ($\beta = -.21$). On the other hand, social dominance orientation ($\beta = -.08$), pleasure seeking behavior ($\beta = .18$), and coercive control over others ($\beta = -.40$) have non-significant

predictor of victim blaming overall. Model one and two significantly predicted victim blaming.

Figure 2. Emerged Model of the Research



D. Additional Analysis

One-way ANOVA was used to compare the age of perpetrators in terms of victim blaming in sexual assault perpetrators.

Table 4. One-way ANOVA Comparing Age of Perpetrators and Victim Blaming

Variable	Adolescents (n=62)		Middle aged (n=38)		Elders (n=20)		F(2,117)	p	Partial η^2
	M	SD	M	SD	M	SD			
Victim blaming	32.74	9.64	27.55	9.72	30.40	8.58		.03	0.99

Note. N=120, M=Mean, SD= Standard Deviation

Results of ANOVA showed that adolescents have higher mean than middle adults and elders.

To examine the multiple comparisons, post hoc test was carried out and showed in table five.

Table 5. Post Hoc Test of Age in Terms of Victim Blaming

I	J	MD	SE	P	95%CI	
					LB	UB
Adolescents	Middle adults	5.18	1.95	.03	.54	9.83
	Elders	2.34	2.44	.61	-3.46	8.14
Middle adults	Elders	-2.84	2.62	.52	-9.08	3.38

Note. M=Mean, MD=Mean Deviation, SE=Standard Error, CI=Confidence Interval, LB=Lower Limit, UB=Upper Limit

The results of the multiple comparison showed that adolescents and middle adults had significant difference. The results also showed that middle adults and elders did not have significant difference. Similarly, elders and adolescents had no significant correlation.

E. Discussion

The present study was conducted to examine the relationship between rape myth acceptance, social dominance orientation, and victim blaming in sexual assault perpetrators. The results revealed that rape myth acceptance was correlated with victim blaming.

Those perpetrators who held myths about rape and who held negative beliefs about the appearance of the victim and the enticing behavior of the victim blame their victim for assault.³⁷ Because of their negative beliefs, perpetrators were hostile towards the victim when they believed that women were at fault for the assault.³⁸ The results of the study were also supported the previous literature that women entice men by their dressing. Female who wore dresses that show their figure or that shows their physical appurtenance invites men for physical intimation.³⁹

The results of the present study were supported. The myth is that women get pleasure through sexual assault so it is not the fault of the offender but theirs. Many other researches also supported that many offenders considered rape as not a rape but source of the sexual pleasure of women.⁴⁰ Through rape myth

³⁷ Klement, Sagarin, & Skowronski, *Accusers Lie and Other Myths*.

³⁸ Megan Crippen, *Theories of Victim Blame*, SENIOR HONORS PROJECTS, 66 (2015).

³⁹ Kamal, Shaikh, & Shaikh, *Comparative Analysis of Attitudes and Perceptions about Rape among Male and Female University Students*.

⁴⁰ R. Iconis, *Rape Myth Acceptance in College Students: A Literature Review*, 1 CONTEMP. ISSUES EDUC. RES. (CIER) 47 (2008).

acceptance perpetrators blame their victim for their attractive physical appearance and through their entrancing manners.⁴¹ Many researches confirmed the hypothesis that those perpetrators who had myths about rape significantly justified their actions through blaming their victim's entrancing nature her physical appearance and her behavior.⁴²

The present study also supported that rape myth acceptance was correlated with disbelieves about victim. Offenders who thought that after having sex women will be happy and they themselves wanted to have sexual relationship with them.⁴³ Perpetrators believed that women who belonged to different age groups and different races manipulate the situation and they were not able to be trusted while reporting the crime. Even if the women living in the neighborhood of the perpetrators came and reported

⁴¹ Gravelin, Biernat, & Bucher, *Blaming the Victim of Acquaintance Rape*.

⁴² R. Daffara, *The Pervasiveness of Rape Myths Acceptance and the Transformative Potential of the Istanbul Convention, GREVIO's Contribution*, doctoral dissertation (2018).

⁴³ S.C. Evans, A.D. Boan, C. Bradley, & L.A. Carpenter, *Sex/Gender Differences in Screening for Autism Spectrum Disorder: Implications for Evidence-Based Assessment*, 48 J. CLINICAL CHILD & ADOLESCENT PSYCHOL. 840 (2019).

the crime in front of the perpetrators, they would never believe them.⁴⁴ People who blame the victim and consider the victim responsible for the crime are those who strongly held myths regarding rape.⁴⁵ Study showed that usually offenders had negative thoughts and believes about the reputation of the victim. According to them victim of sexually assault usually have bad reputation in society that's why they attract the perpetrator for sexual satisfaction. The present study supported the hypothesis that that perpetrator who assault women had myths about rape and therefore they justified their action through blaming the victim.⁴⁶

Results of the present study stated that rape myth acceptance is related to the subscale of victim blaming that was justification of their actions. Perpetrators justified their crime by stating that men are provoked by the women through their dressing and way of talking or entrancing behavior.⁴⁷

⁴⁴ Crall & Goodfriend, *She Asked for It*.

⁴⁵ Klement, Sagarin, & Skowronski, *Accusers Lie and Other Myths*.

⁴⁶ Newman & Colon, *Beliefs about Rape among College Males*.

⁴⁷ Klement, Sagarin, & Skowronski, *Accusers Lie and Other Myths*.

Moreover, men more often don't have control over their sexually desires, once they were sexually provoked by any means they cannot be considered guilty if they commit any crime. So, Perpetrators justified it that rape is not a crime a sexual gratification that both men and women enjoy. These findings were also supported by previous literature via through blaming the victim, rape myth acceptance recall the memory process that can justify the accusing after the incident.⁴⁸

Similarly, it was hypothesized that rape myth acceptance predicted victim blaming in sexual assault perpetrators. The result of the present study supported the hypothesis that rape myth acceptance was a significant positive predictor of victim blaming in perpetrators. These results were also supported by the previous literature that rape myths causes accusing victim in sexual assaults.⁴⁹ Mostly rape

⁴⁸ R.J. Dawtry, P.J. Cozzolino, & M.J. Callan, *I Blame Therefore It Was: Rape Myth Acceptance, Victim Blaming, and Memory Reconstruction*, 45 PERSONALITY & SOC. PSYCHOL. BULL. 1269 (2019).

⁴⁹ M. Davies, J. Gilston, & P. Rogers, *Examining the Relationship between Male Rape Myth Acceptance, Female Rape Myth*

perpetrators attribute the blame to the victim and made them responsible for their fate. Males highly blamed the victim when these stereotypical myths occurred. When perpetrator held these myths the probability of judging a rape or sexual assault as less severe becomes high.⁵⁰ Myth regarding rape can be different across the cultural but they all involve negative beliefs about the victim, justifications of perpetrators behavior, and disbeliefs about the rape claims. These myths explained that only some specific types of the women become victim.⁵¹ The results are also supported by S. Duff and A. Tostevin into fully understanding rape myth acceptance in the general population that leads to victim blaming.⁵²

Similarly, it was hypothesized that there was a positive significant relationship between social dominance orientation and victim blaming in sexual

Acceptance, Victim Blame, Homophobia, Gender Roles, and Ambivalent Sexism, 27 J. INTERPERSONAL VIOLENCE 2807 (2012).

⁵⁰ Gravelin, Biernat, & Bucher, *Blaming the Victim of Acquaintance Rape*.

⁵¹ *Id.*

⁵² Duff, S. & Tostevin, A. (2015). Effects of gender, rape myth acceptance, and perpetrator occupation on perceptions of rape, *Journal of Criminal Psychology*, Vol. 5 No. 4, pp. 249-261.

assault perpetrators. The findings of the present study supported the hypothesis that those who were high on social dominance orientation and had a tendency to be dominant against others also scored high on victim accusing subscale. Social dominance orientation is highly correlated with how the partner involves a relationship with his spouse.⁵³ The subscale of social dominance orientation, pleasure seeking nature of perpetrators, was also correlated with victim accusing subscale.

It was also hypothesized that social dominance orientation predicted victim blaming in sexual assault perpetrators. The results of the present study did not retain the hypothesis. According to these results individuals assumed that women are weaker than men and are not competent to govern social institutions; and believe that females are dangerous and manipulators due to the sexual power they exert over men. On the other hand men have a protecting

⁵³ G. Sadikaj, D.S. Moskowitz, & D.C. Zuroff, *Negative Affective Reaction to Partner's Dominant Behavior Influences Satisfaction with Romantic Relationship*, 34 J. SOC. & PERSONAL RELATIONSHIPS 1324 (2017).

role toward women and positive behavior towards women. In most places men are dependent and feel powerlessness with respect to women.⁵⁴

Additional analysis suggested there was a significant difference between the age of the victim and victim blaming in sexual assault perpetrators. Perpetrators who were adolescents (18-24) were more likely to blame the victims than middle aged and older adults. These findings are supported by the findings of previous studies that showed that those youngsters aged between 17 to 24 had higher double standards and blame the victim more than adults who were between the age range of 25 to 32.⁵⁵

XI. CONCLUSIONS

A. Conclusion

It was concluded in light of current study findings that sexual assault perpetrators who accept rape

⁵⁴ Canto, Vallejo-Martín, Perles, & San Martín, *The Influence of Ideological Variables in the Denial of Violence against Women*.

⁵⁵ N. Jamshed & A. Kamal, *Prevalence of Rape Myths and Sexual Double Standards among University Students in Pakistan*, 36 J. INTERPERSONAL VIOLENCE __ (2019).

myths for example, women's dressing, behavior, mode of talk, and entrancing behavior provoke them blame their victim for sexual assault. Perpetrators on rape myth acceptance held negative and false beliefs about victims' reputations and victims' intentions, and accuse their victim for provoking them sexually. It was also concluded that rape myth acceptance did not affect perpetrators' justifications of their actions. They just blame and accuse their victim on the bases of their misbeliefs that the victim wanted to have sex with them and the victim made a way for them.

The characteristic of social dominance orientation was seen in sexual assault perpetrators. Perpetrators wanted to have control over the victims and showed their authority over women through sexually harassing them. Perpetrators had pleasure seeking nature which portrayed that Women were vulnerable and incapable of protecting themselves. This portrayed women as weak and passive in absolute terms, and men as strong and active, thus fortifying deep-rooted blame against women for any misshaping.

B. Limitations

The current study was carried out only on a small group of rape perpetrators from four jails of different cities of Punjab and others who belong to different areas were excluded. The study carried out only included convicted rape perpetrators. Those who were under trial were not studied.

C. Suggestions

Rape perpetrators from all over Pakistan should be studied. A cohort study should be conducted for reliable results. Indigenous tools should be developed and used so that cultural affect might be reduced. Qualitative, in depth study should be carried out in order to have complete understanding of the rape myth.

D. Implications

The findings of the study should be used as an addition in research literature. The results of the present study are useful in eliminating the myth

regarding rape, as being the fault of the victim. The results will be helpful in providing psychological interventions to the convicted rape criminals. The results will also be useful for future research and will be helpful in decreasing the rape myths and blaming attribution to victims from the society.