

- Vol. VII, No. IV (Fall 2022) ▪ p- ISSN: 2708-2091 ▪ e-ISSN: 2708-3586 ▪ L-ISSN: 2708-2091
- Pages: 46-51 ▪ DOI: 10.31703/gsr.2022(VII-IV).05 ▪ URL: [http://dx.doi.org/10.31703/gsr.2022\(VII-IV\).05](http://dx.doi.org/10.31703/gsr.2022(VII-IV).05)
- Citation: Ajmal, A., Nasim, B., & Rasool, F. (2022). Psychologists as Expert Witnesses in Criminal Matters in Courts in Pakistan. *Global Sociological Review*, VII(IV), 46-51. [https://doi.org/10.31703/gsr.2022\(VII-IV\).06](https://doi.org/10.31703/gsr.2022(VII-IV).06)

Psychologists as Expert Witnesses in Criminal Matters in Courts in Pakistan

Ali Ajmal		LL.M, University Law College, University of the Punjab, Lahore, Punjab, Pakistan. Email: forensicanalysis007@gmail.com (<i>Corresponding Author</i>)
Bushra Nasim		Lecturer, Lahore School of Professional Studies, The University of Lahore, Punjab, Pakistan.
Faiza Rasool		Research Scholar, Institute of Applied Psychology, University of the Punjab, Lahore, Punjab, Pakistan.

Abstract: *This paper analyzes the role of psychologists as expert witnesses and its evidentiary value in the criminal matters in the courts in Pakistan. Under article 59 of Qanoon-e-Shahadat Order 1984, a psychologist can be an expert and his expert opinion is admissible in the court subject to the criteria laid down by this article. The scope of this paper is limited to the expert witness and expert opinion of psychologists in the form of evidence in criminal matters in the courts in Pakistan. The courts in Pakistan consider the testimony of psychologists as admissible when relevant. However, the probative value of the evidence presented by a psychologist depends upon his relevant qualification and the psychological methods applied in a particular case. The findings of this article have implications for psychologists, psychiatrists, jurists, judges, and lawyers*

Key Words: Evidence, Expert, Psychologist, Witness

Introduction

The psychologists across the jurisdictions of the world are appearing in the courts of law as expert witnesses more frequently than ever before. However, the recent surge in accepting the expert testimony and the opinion of psychologists does not sufficiently assure its probative value as evidence in the court of law. There is a practice of the courts to enquire the relevant qualification of such experts while assuring sufficiently the accuracy and the validity of the methodology adopted (Colman, 1995). The research on the psychologists in the courts and on other relevant issues, either from psychological perspective or legal perspective, are dominated by the US studies. Consequently, English Law adopted many of its concepts from the US Law and as a matter of fact, Pakistan and India adopted its legal system from the Great Britain and even after so many decades the laws in Pakistan are predominantly of British era. As far the law of evidence in Pakistan

particularly on the expert evidence and testimony is concerned it is largely influenced by British Law (Sarathi, 1972).

History of Psychologists as Expert Witnesses in Courts

The psychologists in the capacity of expert witnesses in the courts have a long history as it went through different developmental stages. The first psychologist who was called in 1896 as an expert witness in the court of law was a German psychologist named Albert von Schrenck-Notzing, who reportedly testified in the trial of an accused who was charged with triple murder (Bartol & Bartol, 1987).

Later, after passing through different phases and facing mixed response from legal fraternity the concept and the practice of psychologist in the capacity of an expert in the court of law have seen an important milestone when in the US three decisions

i.e. *People v. Hawthorne*; *Hidden v. Mutual Life Insurance Company*; and *Jenkins v. United States*, gave a go ahead to the psychologists to assess independently a person suffering from mental disorder for legal purposes and to act as expert witnesses in this regard. However, the law in case of psychologist as an expert in the court of law in criminal matters is not uniform across the United States rather there are different opinions of different states regarding the assessment of mental disorder by the psychologists for forensic purposes. Moreover, as far as the civil matters are concerned psychologists are playing a significant role as expert witnesses in personal injury claims and their evaluations based on psychological testing are highly valued in the courts (Weiner & Otto, 2013).

Who is a Qualified Psychologist?

A psychologist is a professional who practices psychology and studies mental processes i.e. emotions, cognitions, perceptions, and behaviour. There are different specializations of psychologists depending upon the area such as clinical psychologist, forensic psychologist, educational psychologist, industrial and organizational psychologist etc. (Bureau of Labor Statistics, 2022).

In UK, the psychologists with different areas of specializations are protected titles and regulated by the Health and Care Professions Council under the Health Care and Associated Professions (Miscellaneous Amendments and Practitioners Psychologists) Order, 2009. In India the section (2) (1) (g) of Indian Mental Health Act, 2017 defines a clinical psychologist as a professional who is having a postgraduate degree in clinical psychology or applied psychology obtained after the completion of certain study credit hours with mandatory supervised clinical training and such a professional is recognized and registered with the Rehabilitation Council (Section 3 of the Rehabilitation Council of India Act, 1992).

In Pakistan there is no proper statutory body which regulates the psychologists. There are a few professional organizations of psychologists such as Pakistan Psychological Association and Pakistan Association of Clinical Psychologists, but there is no regulatory statutory body to regulate the profession in Pakistan. However, the professional organizations

in Pakistan set their minimum criteria for their memberships as Pakistan Psychological Association in case of psychologist (Constitution of Pakistan Psychological Association, 1999) and, Pakistan Association of Clinical Psychologists in case of clinical psychologists (Ethical Code of Conduct of Practicing Clinical Psychologists in Pakistan, 2011) which may be taken as guiding factor in the absence of any statute to regularize the psychologists in Pakistan.

Who is an Expert?

We find the definition of an expert in different statutory provisions in the law in Pakistan. These definitions of an expert are not limited to the psychologists only, rather it explains the concept of an expert witness in general and how the law treats a person as an expert in his/her field. Article 59 of QSO, 1984 deals with an expert witness. Further, the section 2(f) of the Punjab Forensic Science Agency Act 2007 and the Section 3(f) of Investigation for Fair Trial Act, 2013 describes an expert. A thorough analysis of how these statutory provisions describe an expert make it clear that an expert is a person who is qualified and having a sound knowledge of his/her area of expertise.

Standard of Expert Testimony

There is certain standard which an expert must meet to get his/her opinion and testimony admissible in the court. The comprehensive criteria which govern the testimony of an expert was first given in the USA which was later adopted by many jurisdictions. The criteria applied to the expert witness and his testimony are guided by The Fry Standard (Frye v. United States, 1923) and The Daubert Standard, (Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993). This criteria of evidence was reinforced by the two other judgements General Electric Co. v. Joiner (1997) and Kumho Tire Co. v. Carmichael (1999) and finally this criteria was incorporated in Rule 702 of Federal Rules of Evidence. The criteria of expert testimony adopted in these judgements are widely accepted across the jurisdictions of the world. In English law there is similar kind of criteria governing the testimony of an expert. Even in Pakistan the courts heavily relied on these standards while dealing with the expert

testimony and expert witness. According to this criterion the opinion of an expert must be a product of reliable and valid scientific procedures and principles of wide general acceptance.

Statutory Provisions in Pakistan Dealing with Psychologist as Expert Witness

Article 59 of QSO, [1984](#) is the relevant statutory provision which deal with the expert witness and expert opinion of a psychologist. Article 59 of QSO, [1984](#) specifically deals with the expert opinion in case when a court wants to form an opinion on some technical issue. The opinions of experts on relevant point, when the court deem necessary, would be a relevant fact and can be taken. Further, Article 164 of QSO deals with the evidence which is available employing the modern methods and techniques and thus, this article is relevant while dealing with an expert regarding his/her opinion when the modern methods and techniques are involved.

Rule of Evidence Regarding Opinion of An Expert Witness (Psychologist)

There is a universal rule of evidence that a witness during the recording of his/her testimony in the court of law can only speak about the facts and his/her opinion deduced from the facts is irrelevant and inadmissible (Cutler & Griffin, [1885](#)). The law of evidence in Pakistan, like other jurisdictions in the world, considers the opinion of a witness as inadmissible piece of evidence as the witness is required by the law to limit his/her testimony to the facts only (Article 2(d) of the QSO, [1984](#)). However, this rule of evidence is flexible in case of the opinion of an expert as the expert opinion of an expert is admissible subject to the certain safeguards specified by the law of evidence (Grover & Murphy, [2013](#)).

Psychologists in Courts of Law in Criminal Matters

Wigmore ([1940](#)) was a proponent of psychologists as expert witnesses in criminal matters and of using the psychological tests for the assessment of insanity subject to the validity and general acceptance of such tests in scientific community. At first, the testimony of a psychologist as an expert regarding the mental condition of an accused in criminal matters was

rejected on the ground that the psychologists are not medical professionals, and the testimony of medical persons are only admissible in this regard (Odom v. State, [1911](#)).

It was in the early 1940s when the courts across the US started to give verdicts in the favour of psychologists as competent experts in determining the criminal responsibility of the accused and consequently, the testimony of psychologists in such matters was made admissible (Loh, [1981](#)). In this regard, the first seminal judgement was *People v. Hawthorne* ([1940](#)) case. The Michigan Supreme Court ruled that a psychologist can testify as an expert in case of an insanity plea taken by an accused. Moreover, it was decided that the competency of psychologists cannot be presumed lesser than medical professionals in the assessment of insanity of an accused (*People v. Hawthorne*, [1940](#)).

Later, in *Jenkins v. United States* ([1962](#)), the Court gave similar kind of verdict which further smoothed the way for the psychologists to act as experts in case of mental status of an accused person (*Jenkins v. United States*, [1962](#)). The psychologists can act as expert witnesses for many legal issues which varied from criminal to civil matters. In criminal proceedings, psychologists usually assess the accused persons regarding their criminal responsibility, competency to stand trial, and competency to serve punishment (Grisso, [2003](#)).

The Admissibility of the Expert Opinion of Psychologist in Court

The testimony and the forensic report of an expert (psychologist) in the court of law is not considered admissible unless it tests the fire of the relevant rules of evidence. The report and the testimony given by a psychologist in the capacity of an expert shall be subject to the examination in chief by a party and then the cross examination by the adverse party before being considered as an admissible piece of evidence in the court. Moreover, the relevant qualification of a psychologist and the reliability of the report written by him must be tested in the court of law as a number of superior courts judgements interpreted a forensic report to be admissible in the court of law must be written by a qualified expert while meeting all the necessary criteria (*Kashif Nawaz v The State*, [2018](#); *Rizwan Ahmad Qureshi v*

State, [2017](#); Shaukat Ali Alias Baba v State, [2016](#); Niaz Alias Niazzo v State, [2015](#); Arif ud Din v State [2013](#)).

The Opinion of a Psychologist is Corroborative rather Conclusive Evidence

The opinion of a psychologist in relevant matters is a corroborated piece of evidence rather conclusive evidence. The evidentiary value of psychological forensic evidence is corroborative. The courts in Pakistan do not consider any kind of expert opinion as conclusive evidence rather the status of all such kinds of evidence is corroborative (Mukhtar Alias Mokhi v The State, [2018](#); Muhammad Hayat v State, [2016](#); Khalid Rasheed v State, [2012](#); Zeeshan Alias Shani v State, [2012](#); Sardar Ali v Special Judge, [1996](#)). This principle is also applied on the expert evidence and expert opinion of a psychologist as the opinion of a psychologist is considered as forensic evidence in criminal matters.

Competency of An Expert Witness (Psychologist)

As far as the value determination of a psychologist's expert opinion is concerned, it depends upon the relevant qualification of the psychologist and the issues on which such opinion is being sought. A general principle, which is applied to any expert acts as an expert witness in the court of law, is that such an expert must possess relevant qualification and skills. Furthermore, the manner of the testimony of the expert also matters a lot. The expert must not only confine himself to the facts in his opinion rather there must be a comprehensive report of how the expert came to such a conclusion, what kind of apparatus and the assessment tests were applied and whether these were accepted by the other professionals in the fields. In short, the tools and methods of assessment must be reliable, valid, standardized and objective (Ranchhoddas & Thakore, [2016](#)).

Probative Value of Psychologists Expert Opinion

The probative value of Psychologists expert opinion and testimony as evidence depends upon the relevant qualification, experience and the tests and methods he adopts to assess a person. However, the

courts have been seen to more attentive towards the relevant qualification and the expertise of psychologists while assessing the credibility of their expert opinions and are not sufficiently prone towards the assessment of the psychological procedures adopted by the psychologists to evaluate. The assessment tools used by the psychologists are not reliable and objective up to a certain standard because of which the evaluations made by the psychologists sometimes face criticism regarding the non-standardization of procedures across the situations (Colman, [1995](#)).

Malingering Is an Important Consideration in Forensic Psychological Evaluations in Criminal Matters

One of the central concerns a psychologist must address is the issue of malingering as it has been assumed by many across legal fraternity that an accused person is faking his/her symptoms to avoid the punishment. The issue of malingering is more relevant in the criminal matters. This defense even put the psychological assessment and methods under fire as many stakeholders in legal fraternity see the psychological assessments regarding insanity of an accused with suspicion. Therefore, there is a dire need to address the central question of malingering by an accused in every forensic assessment by a psychologist, which is unlikely in clinical assessment where the symptoms reported by a client is taken on its face value with an objective to treat the client. Preferably, the issue of malingering must be evaluated and addressed directly in forensic report by psychologists (Colman, [1995](#)).

Role of a Psychologist in the Evaluation of an Accused as per the Criteria of Section 84 of PPC

In Pakistani legal system the psychologists play a central role with the psychiatrists in assessing the accused who takes insanity defense as per the criteria laid down in section 84 of Pakistan Penal Code. According to section 84 of PPC, a person cannot say to commit a crime if he had done it because of his mental disorder which made him incapable to understand the nature of his act ([Section 84 of Pakistan Penal Code](#)).

When an accused is taking the defense of insanity under this section, it is necessary for the

court to ask for the evaluation of mental state of such a person that at the time of commission of the offense the person was having mental disorder. The courts in Pakistan refer such matters to medical board which is comprised of psychiatrists and psychologists (Safia Bano v. Home Department and others, [2021](#)).

The Role of a Psychologist in Determining the Competency to Stand Trial

Under the provisions of the criminal law in Pakistan when an accused person takes the plea during a criminal trial under section 464 and/or 465 of Criminal Procedure Code that he/she is unable to continue his/her trial by the reason of insanity, it is compulsory for the court to get such an accused evaluated by medical board to assess his claim of incompetency to stand a trial. For such matter such an accused is referred to a medical board, comprising of qualified psychiatrists and psychologists, for the evaluation of his mental health status. The Supreme Court recognized the role of the psychologists in the forensic assessment of persons suffering from mental disorders (Safia Bano v. Home Department and others, [2021](#)).

Recommendations

Medical boards must be formed according to the direction of the Supreme Court of Pakistan given in

the Safia Bano case. There must be the training of forensic psychologists and other stakeholders according to the directions given in the same judgement. The psychologists must be given their due status in the justice system in Pakistan. There must be the training of judges and the lawyers to understand the role of a forensic psychologist and the services he/she can provide to the courts. Moreover, the role of a forensic psychologist in Pakistan must be at par with that of in other developed countries. As per the practice in the courts in Pakistan the role of a psychologist is mostly limited to the medical board formed to evaluate the mental status of an accused, either under-trial and/or convict, claiming insanity defense and even that role is of secondary nature. A psychologist as a trained professional in mental health assessment must be given a primary role in mental health evaluations for forensic purposes. Furthermore, the psychologists can be involved to act as expert witnesses in several matters to assist the court i.e., Child Custody Evaluation, Civil Capacities Assessment, Personal Injury Claims Evaluation, Criminal Responsibility Evaluation, Risk Assessment for recidivism etc. To cater the need of psychologists as expert witnesses in criminal justice system there must be proper legislation and the capacity building of the psychologists in forensic field.

References

- Arif ud Din v. State 2013 PCrLJ 1129
- Article 2(d) of Qanoon-e- Shahadat Order, 1984
- Article 59 of Qanoon-e- Shahadat Order, 1984
- Article 164 of Qanoon-e- Shahadat Order, 1984
- Bartol, C. R. & Bartol, A. M. (1987). History of forensic psychology. In I. B. Weiner & A. K. Hess (Eds), *Handbook of Forensic Psychology* (pp. 3-21). New York: Wiley
- Bureau of Labor Statistics (2022). *Psychologists: Occupational Outlook Handbook*. USA. <https://www.bls.gov/ooh/life-physical-and-social-science/psychologists.htm>
- Colman, A. M. (1995). *Testifying in court as an expert witness*. In *Professional psychology handbook* (Section II, pp. 70-79). Leicester: The British Psychological Society.
- Constitution Pakistan Psychological Association. (2013). *Rules and Regulations* (Chapter 3). Section 1 of Pakistan Psychological Association.
- Cutler, J. & Griffin, E. F. (1868). *Edmund Powell, Principles & Practice of the Law of Evidence* (3rd Ed.) Kessinger Publishing, London: Butterworths.
- Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993)
- Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).
- General Electric Co. v. Joiner (1997)
- Grisso, T. (2003). *Evaluating competencies: Forensic assessments and instruments* (2nd ed.). New York, NY: Kluwer Academic/Plenum Press.
- Grover, R. & Murphy, P. (2013). *Murphy on Evidence* (13th Ed). Oxford: Oxford University Press.
- Jenkins v. United States, 307 F.2d 637 (D.C. App. 1962).
- Kashif Nawaz v. The State 2018 YLR 1084
- Khalid Rasheed v. State 2012 MLD 1274
- Kumho Tire Co. v. Carmichael (1999)
- Loh, W. D. (1981). Perspectives on psychology and law. *Journal of Applied Social Psychology*, 11, 314-355.
- Muhammad Hayat v. State 2016 PCrLJ Note 121
- Mukhtar Alias Mokhi v. The State 2018 YLR 1302
- Niaz Alias Niazzo v. State 2015 YLR 2255
- Odom v. State, 174 Ala. 4, 7, 56 So. 913, 914 (1911).
- People v. Hawthorne, 293 Mich. 15, 291 N.W. 205 (1940).
- Ranchhoddas, R. & Thakore, D. K. (2016). *The Law of Evidence* (ed. 24). New York, United States: Lexis Nexis.
- Rizwan Ahmad Qureshi v. State PLD 2017 Sindh 653
- Safia Bano v. Home Department and others, Government of Punjab PLD (2021) SC 488
- Sarathi, V. P. (1972). Historical Background of Indian Evidence Act 1872. *Journal of the Indian Law Institute*, 2(Special Issue), 1-25.
- Sardar Ali v. Special Judge 1996 MLD 460
- Section (2) (1) (g) of Indian Mental Health Act, 2017
- Section 2(f) of the Punjab Forensic Science Agency Act 2007
- Section 3 of the Rehabilitation Council of India Act, 1992
- Section 3(f) of Investigation for Fair Trial Act, 2013
- Section 5 of Health Care and Associated Professions (Miscellaneous Amendments and Practitioners Psychologists) Order, 2009
- Section 84 of Pakistan Penal Code
- Shaukat Ali Alias Baba v. State 2016 PCrLJ Note 33
- The State v. Shakeel Ahmad 2015 MLD 1374
- Weiner, I. B. & Otto, R. K. (2013). *The Handbook of Forensic Psychology*. John Wiley & Sons, Inc., Hoboken, New Jersey.
- Wigmore, J. H. (1940). *Evidence in trials at common law*. Boston, MA: Little, Brown.
- Zeeshan Alias Shani v. State 2012 SCMR 428