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# Features of Objective and Independent Nature of Expert Evidence: Prospective Joint Venture for Scientific and Legal Actors in Pakistan

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## Abstract

The academic approach towards relevancy, reliability, validity and admissibility of scientific expert evidence, is important to the literature on scientific evidence. This article, however, underpins the fact that the reliability test of scientific expert evidence is baseline test and suggests the importance of admissibility test and the assessment of probative value on the objective standards of scientific expert evidence. Nevertheless, the test concerns with features of objective and independent nature of expert evidence. This is real challenge for adversarial systems and depends on how the systems deal with adversarial expert evidence. This article presents an overview of suggested models, established systems in USA, and UK, to secure the objective, impartial, and non-biased expert evidence. In doing so the article highlights the need to introduce code of duties, obligations, and responsibilities of expert witnesses in Pakistan, and the need for capacity building of legal actors in this regard.

**Keywords:** Adversarial system, Adversarial expert evidence, Expert testimony, Independent testimony, scientific evidence

## Introduction

The procedural standards for admissibility and relevancy of Scientific Expert evidence cannot perform anticipated role unless the concerted effort is demonstrated in the area of reducing the projected opinionated, partisan, and prejudicial nature of expert evidence in adversarial system. Despite this, there is no detriment in experiencing adversarial expert evidence from both sides and adversarial process has tendency to retain check and balance on the prejudiced expert evidence if it permits the expert evidence run from both sides of the dispute accordingly.

Conversely, the difficulty arises where the system being adversarial is focused on expert evidence from only a certain party. The practice of introducing scientific expert evidence from the prosecution side in most of the instances of criminal trial illustrates a practice of inclination of the prosecution's expert evidence and marks an absence of expert evidence from the other side. It is to note here that academic discussion has not opened up at almost any forum in Pakistan; both at Bar, Bench and even in Legal Academia, regarding even the need of adversarial expert evidence, which further underpins the significance of debate on duties, obligations and responsibilities of expert witness from both sides in the litigation.

This article takes on this task to a limited extent and underscores the need of discussion on the standardized protocol or codes for duties, obligations and responsibilities of expert witness particularly with reference to the scientific expert witness. This is because setting a standard protocol for duties, or code of obligations and responsibilities of expert witness delivers a double protection in litigation process, as a result the parties shall benefit in having more relevant and specific expert evidence. For this purpose this article sheds light on the prescribed protocols, standards for ethics, codes of duties, obligations and responsibilities of expert witnesses across the jurisdictions (Dwyer 2003) and presents an overview of mutual collaborative efforts of scientific and legal teams including Bench, Bar, Scientific and forensic experts in USA, UK. Afterwards this paper lays down suggestions and conclusion in saying that with the trend to accept scientific evidence the courts and lawyers should be more insightful into the process relating to expert witnesses in a desire to save the time and cost of the litigation and avoid mere exclusionary policy in dealing with scientific expert evidence.

## Research Methodology

The research methodology employed in this paper follows the black letter law methodology which is doctrinal research approach recognized for conducting the legal research. The paper is a qualitative research where inductive and deductive content analysis is applied on the analysis of primary and secondary resources including legislations, judicial precedents, and commentaries on the legislation, research papers, journal articles, newspapers and books.

## Literature review

The Scientific expert evidence is permissible, relevant and admissible in the legal framework of Pakistan and despite of this fact a dearth of literature is available on the topic. Those who have contributed to the fair and just attribution of scientific knowledge (Essa 2019) to its use in the criminal justice system (Faisal 2018), have consulted the establishment of Forensic Science Agency and its scope of examination of material evidence and presentation of expert analysis and report in the court(Farooq and Waheed 2013). The authors have also discussed when the admissibility of the scientific evidence is not supported in the legal framework and the reasons behind such exclusionary judicial approach towards the scientific expert evidence (Cheema 2016). This is also realized that the lack of laboratories and the funding can also impact the scope and use of scientific evidence during the litigation (Mateen et al 2018). Additionally, the observations note that the police has not attained collaboration with the forensic experts (Munir et al 2020) neither Police have developed their own human resource to overcome the need of investigation(Fasihuddin 2013) and pre-trial demand of handling the material evidence from the crime scene or trace evidence techniques that comply with the scientific protocols (Munir et al

2020) developed by the PFSAA for that purpose. The lack of liaison of police and forensic experts had turned out to have consequential insufficient scientific evidence brought during trial which can be seen leading to exclusionary judicial policy for the scientific evidence (Munir et al 2020).

Besides this available literature, there is also lack of academic discussion in Pakistan on the ethics and responsibilities of the expert opinion, let it be scientific, technical or specialized expert opinion. This research points to the critical challenge of adversarial system where it is possible that both parties may call the expert evidence and they can both cross examine their respective opponent's expert testimony, or the expert opinion may be presented from prosecution side as a court appointed or government appointed expert (Faure and Visscher et al 2016). In both the situations as above, undeniable fact it is that the expert may find it difficult to choose the one way from the two options; taking stance of the party hiring them for their side of the argument or stating the clear and true statement of opinion as per their knowledge and expertise which could be said to assist only the court in reaching a just decision, no matter who has hired or called for their expert opinion. This article therefore, engages in this discussion and looks into the need and possibility of laying down codes or preparing general guidelines, protocols or instructions for the knowledge of scientific expert so that they know what is expected from them when they are in the courtroom because of their expert knowledge in the relevant field.

**Adversarial System and Adversarial Expert Testimony**

In adversarial system the parties present their respective witnesses and avail the opportunity of cross-examination of the witnesses. It is a well-established procedure to check the relevancy, veracity, and decide the admissibility of the testimony presented by the opposite party. The expert testimony will also hold the same adversarial nature and goes through some more mechanisms than merely a cross-examination. Additionally, the court plays a gatekeeping role in order to check the relevancy, validity, reliability, and admissibility of the scientific expert testimony (Faure and Visscher et al 2016). It is because, the expert opinion in any of its form; either it is invited by the court or government, or it is sought to be presented by both parties to the case; including the prosecution or defense, they are in the courtroom under the rules of exceptions provided in the procedure.

Furthermore, it is the fact that they hold some specialized knowledge in their field of knowledge, skill, technical matter of their expertise, and the court is in need to seek their specialized opinion on a relevant fact in dispute. In doing so, the expert evidence is considered to assist the court before the court reaches a decision on the overall disputed facts in the case (Etherton and Cook et all 2010). At this point the court needs to apply more care and caution to accept an expert opinion because court needs help, assistance (R. vs. B [T] 2006) to understand the status of some facts or matters where court has less to no knowledge. In deriving rules of care and caution, most of the times courts must consider judicial comments setting the principles and guidelines in the absence of clear legislative provisions. It is maintained that the court assumes the role of gatekeeper and in doing so; they check the relevancy of the expert evidence based on their skills and check if the expert is properly considered to be skilled or expert as they claim to be (Etherton and Cook et all 2010).

Additionally, the court will evaluate the validity of the data, process, or grounds used knowledge of the expert (Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993). This gatekeeping function of the court leads to another care in evaluating the expert evidence with reference to other's in the field to see any support, or inconsistency of the opinions of other experts or peers in that field of knowledge. The use of data, the validity of the data and methodology in the relevant field and the peer review (Faure and Visscher et al 2016) of the expertise of the expert witness, and his/ her publication in the relevant field are considered by the court before deciding the probative value or admissibility of such expert evidence in the court (Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993).

The care and caution of being a gatekeeper for scientific evidence includes considering the probability of potential risk of error in the data and methodology and to evaluate the validity of manner of application of such valid data and methodology by the expert on the fact relevant in a dispute (Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993). Having checked the relevancy, validity and reliability of the expert opinion the court must focus on how far and in what weight the evidence can be admissible in that case. In other words, court functions to test the probative value of the expert evidence (Ward 2020). This is the stage where courts are guided that relevancy, reliability, and validity of expert testimony does guarantee by itself that the expert evidence is accepted as it is (Davie vs. Magistrates of Edinburgh 1953) (Etherton and Cook et all 2010), however, the rules of procedures of accepting or excluding the evidence such as weight of evidence or probative value as to its admissibility has to be decided only by the court (Davie vs. Magistrates of Edinburgh 1953).

For this purpose the court will consider the other circumstances pertaining to the expert evidence such as judging their impartiality (Michell and Mandhane 2005), non-prejudicial and unbiased aspect of the expert evidence/opinion that will lead to the just adjudication (National Justice Campania Naviera, S.A. vs. Prudential Assurance Co. Ltd 1993). Just as important it is to notice the manner of reporting or adducing the expert testimony because the minor addition in the opinion will make it a persuasive opinion (Sutherland 2009) which will have less probative value, on the other hand, keeping a focused statement to the relevant fact of scientific importance (R. vs. Harris and others 2006) will affect the probative value positively and court may judge former evidence as possessing lesser value (Ward 2020) than the later. Also, an expert opinion advocating the party's stance (National Justice Campania Naviera, S.A. vs. Prudential Assurance Co. Ltd 1993) will lead to non-admissibility of the evidence in the courtroom.

Additionally, the use of words such as 'probability' and 'likelihood' in the expert opinion will be noticed by the court while deciding for the weight of evidence which can lead to a conclusion for a lack of confidence in the expert evidence resulting in the uncertainty of the expert evidence and court may decide to exclude such evidence (Mnookin and Samuel 2003). On the other hand, the over confidence is not required that is why the rate of error and risk in the scientific method or technique should be revealed in the court (Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993). It is to note from the discussion in this section that in case of expert evidence the court has to do more effort than in ordinary adversarial testimony and the standards are more detailed than merely a cross-examination of the evidence presented in the court (Davie vs. Magistrates of Edinburgh 1953).

It is observed that realizing the importance of scientific expert evidence and the adversarial nature of the system, it is vital to encourage the adversarial expert evidence and in doing so the use of adversarial mechanism to shake the reliability of the evidence will be beneficial to the best use of expert evidence in an adversarial system. In order to adversarial system do better in case of expert opinion, the adversarial system should be a contest between both parties (Etherton and Cook et all 2010), where a contest is such that each party serves as a check on the other, conversely, the one side of the expert opinion from prosecution only is warned as being a disaster for the adversarial system (Mnookin and Samuel 2003). This is to note that when expert evidence is presented from both sides the adversarial nature of their evidence will demand the same gatekeeping function of the court while considering both sides of expert testimony.

This article will now focus to underline the ethical standards, duties, obligations, and responsibilities of the expert witness which are vital to be considered by the court in weighing the probative value of expert evidence. This topic is important and cannot be ignored while developing the rules and procedures for application of scientific evidence in Pakistan.

**Overview of Developed Features of Objective and Independent Nature of Expert Evidence**

Significant joint committees, commissions that include scientific experts, legal actors such as judges from higher judiciary, lawyers, and the members from the Forensic agencies have been deriving different rules of guidance for expert witnesses (Michell and Mandhane 2005) which underscores a discourse on setting the ethical standards, duties, and responsibilities of expert witnesses. These standards are important to perform effective gatekeeping functions of the court (Dwyer 2003). The observations from the reports and recommendations of committees and the commissions as they work in other jurisdictions are constructive to develop the topic under discussion with reference to scientific evidence in Pakistan.

The factors like unfair prejudice towards the opposite party's case, where the expert evidence from the other side is so presented that it may confuse the issues instead of performing its prime purpose of assisting the court, or where the evidence is deposed in a way that it misleads the court instead of reaching at a just and sound decision of the fact in dispute, or expert evidence is so much unhelpful that it should be excluded for causing undue delay or a waste to the time, the courts will need to deal with some settled principles to exclude or declare the evidence as inadmissible (Houck and Funk et al 2018).General practice noted here includes ethical guidelines and principles of responsibilities for registered scientific experts as given by respective regulatory bodies, and a comprehensive disclosure protocol system (Etherton and Cook et all 2010).

As to the role of regulatory bodies it is to mention for instance, the National Association of Medical Examiners (NAME) which has a code of ethics for their registered experts (Timmerbeil 2003) (Funk Esq. 1963) (Frampton 2008) (Michell and Mandhane 2005). The pharmacy experts (Frampton 2008), doctors (Funk Esq. 1963), or expert witness regulated by other scientific and forensic institutes also work independently of court and the lawyers, but they have settled some code of conducts and ethical requirements mentioned in their membership guidelines or requirements (Michell and Mandhane 2005). They require as a duty that expert witness is bound to provide an objective and unbiased report to the court. The law in UK and USA also clearly binds the expert witnesses about duties and obligations such as Civil Procedure Rules, the

Practice Direction and the Code of Guidance on Expert Evidence (Friston 2005) (Dwyer 2003) (Frampton 2008). These rules bind the expert to ensure that the evidence when presented in court is independent (R. vs. Harris and others 2006) and unbiased. In order to make the statement unbiased and independent these guiding rules; which come either in statute or the directions from the regulatory institutes (Michell and Mandhane 2005) as mentioned above, they all mention that the duties and obligations of expert witness towards court are overriding in such a way that the expert appearing in the court should not reflect on any kind of affiliation or allegiance towards any registering body, institute, or advocate (R. vs. Harris and others 2006) hiring them rather they should be responsible to act as an unbiased, non-prejudicial, independent (R. vs. B [T] 2006) expert and for that purpose their statement should be clear on the data, methodology and the conclusion as per record (R. v. B [T] 2006).

In doing so the expert is required to clearly mention the assumptions, theories, methodologies, and the data upon which the expert is extending the opinion (R. vs. Harris and others 2006). This practice of code of conduct from registering or regulatory bodies shows further emphasize awareness of impartial and independent (National Justice Campania Naviera, S.A. vs. Prudential Assurance Co. Ltd 1993) characteristics of the expert testimony. It is suggested that it is more trustworthy for the expert if he mentions the detail of the steps taken while reaching to conclusion or making observations. He should disclose the event when the data is changed and at which stage of drawing the conclusions the data was changed (R. vs. Harris and others 2006), and the fact of change of data should have been revealed to the court during the legal process to ensure that the change of conclusion is also independent of any bias or prejudice or any kind of extraneous influence on the expert opinion (Michell and Mandhane 2005).

If anything falls out of the expert's knowledge or if something is provisionally assumed by the expert then the information should be clearly and immediately conveyed to the court (National Justice Campania Naviera, S.A. vs. Prudential Assurance Co. Ltd 1993) so that the court and the other party to the litigation will have noticed it. The expert testimony should be seen to be impartial no matter that they are hired or paid by the parties (R. vs. Harris and others 2006) because their overriding duty is towards the court in assisting the court only, and they should always endorse this overriding duty in practice (Faure and Visscher et al 2016) (Frampton 2008).The court has gone far to add objective features to ensure independent and impartial expert evidence (Michell and Mandhane 2005) and it is held that expert should also state the reason of not considering any fact, or not applying any relevant method during preparation of the expert opinion (R vs. Turner 1975).

**Comprehensive Disclosure System**

Not only the registered bodies or licensing bodies or institutes as mentioned above have a general policy in stating the features of objective and independent nature of expert evidence, it is to note here that in UK a comprehensive disclosure system is also applied to ensure that the witnesses provide non-partisan, unbiased, non-prejudicial service to meet justice standards of the law actors including the court. Keeping in view rare and exceptional situations where court will allow opinion evidence such as in case of expert evidence, it is imperative that an impartial, independent, and high standard of objectivity and accuracy should be achieved through the practice of extra mechanism in the court (Michell and Mandhane 2005). The disclosure requirements demand that all the relevant material evidence in the prosecution case is mandatory

to be disclosed to the defendant and if anything is found to have been omitted from such disclosure, the accused may be acquitted based on that very omission of disclosure of material evidence. The binding nature of disclosure of all the relevant material evidence includes material of investigation conducted by expert witness (Etherton and Cook et all 2010) and this information should have been provided to Crown Office before the trial starts. It is believed that such disclosure of all the relevant information as to investigation before the trial helps maintain the credibility of public confidence in the expert's opinion evidence (Crown Office and Procurator Fiscal service in UK).

The disclosure obligation also stems from the primary duty of expert witness towards the court, as mentioned in above section, to assist the court in understanding the scientific fact. This obligation includes not only giving opinion but to disclose data, methodology, the rate of error in the study or hypothesis which is the basis of the expert opinion (National Justice Campania Naviera, S.A. vs. Prudential Assurance Co. Ltd 1993). The disclosure of all these material facts to the Crown Office is coupled with the obligation of Crown Office to disclose these facts to the other party to the litigation against whom the evidence shall be used, it is done to ensure the fair trial in the triangulation of justice system (Ishaq 2014) which includes accused, victim and the public interest in the justice. That means whatever the registered body or institute of the expert and whoever the party it is to hire or call the expert evidence, the duty and obligation of the expert to keep high standards of objective and independent (National Justice Campania Naviera, S.A. vs. Prudential Assurance Co. Ltd 1993) opinion in the court are overriding obligations among all the obligations arising out of any other affiliation or allegiance of the expert witnesses in the circumstances.

**Pre-Cognition Session of Expert Witness**

This comprehensive disclosure mechanism includes a pre-cognition session of expert witness with the Procurator Fiscal Office. This happens in all circumstances; no matter the expert is called by the court or called and paid by the parties to dispute. This session plays a vital role in understanding the expert witness opinion and helps the collection of all relevant material which expert intends to present in the court so that the same information will be disclosed to the defense involved in the case. This system of disclosure is so elaborate that the hearsay evidence of laboratory technicians upon which an expert wants to rely for his opinion should also be mentioned in pre-cognition session so that despite of the hearsay character of these opinions of laboratory technicians they will be noted and firstly transmitted to the other party and secondly these will be allowed to present in court as a material of reliance of expert opinion during the proceeding in the court.

On the contrary, in the absence of such information about laboratory technician's information shared in pre-cognition session with Procurator Fiscal, the expert will not be allowed to rely on laboratory technician's hearsay evidence and that part of information will be precluded from being considered in the expert evidence. This rule of disclosure also applies to any published work or para from any published work (Crown Office and Procurator Fiscal service in UK) on which expert witness will rely and such information should have been earlier disclosed in the pre-cognition session otherwise procurator will not allow such published work or any part of it to be produce in the court by the expert witness.

The pre-cognition session facilitates the Crown office to take record of disclosure from expert witness regarding any material which is important and also the material which could be relevant to the expert opinion but due to certain recorded reason such material is ignored or the expert witness has tagged it as unimportant. In other words, the expert witness informs the Procurator Fiscal about the reasons why some relevant material is considered important to rely during preparation of expert report, opinion, or evidence (Crown Office and Procurator Fiscal Office UK Guidance).

**Capacity Building of Lawyers and Judges**

This can be inferred from above discussion regarding Disclosure and the role of legal actors; such as a prosecution department and the courts, that the lawyers and courts have to confirm to some insightful efforts on their part to keep them aware of some monitoring work of Forensic Science Regulators which is used in investigations (Etherton and Cook et all 2010). Not only this but in order to grasp the effective basic knowledge legal actors should have extended basic understanding of criticism on such Forensic Science Regulator's policy and their work, the guidelines proposed by such critiques of their work, guidelines framed for forensic science regulator's evaluative opinions in collaboration with these regulators, potential stakeholders and the critiques. Just as important it is for lawyers and Judges to note the criticism from legal academics of the work and guidelines developed by Forensic Science Regulators.

It is also suggested to have 'science courts' or include 'expert judge' on the panel of judges (Timmerbeil 2003) but the higher cost estimation of this suggestion is noted, however that fact does not undermine the importance of capacity building of lawyers and judges in this respect. This overall role of legal actors in developing baseline understanding about the Regulators and their work underscores a 'safe reliable test for hearsay evidence like expert evidence' (Freer 2020); an evidence which will otherwise fall in the realm of exclusionary judicial policy (Michell and Mandhane 2005) in the absence of these baseline updated information (Faure and Visscher et al 2016)and it is important considering 'science and justice'(Farooq and Waheed 2013) conundrum. It is also observed that the judicial policy to simply exclude the evidence is not commendable; rather the judicious handling of the expert evidence demands the application of 'rationality in adjudication and priority of protecting innocent from wrongful conviction' (Ward 2020).

**Peer Review College for Competency Review of Expert Witness**

Indubitably, considerable time and money is wasted when it appears during the trial that the expert evidence is not reliable because of some sort of questionable deficiency in information regarding their claimed expertise in the field of their expert knowledge. For this reason, considering expert panel (Michell and Mandhane 2005) or prior 'Peer Review College' (Freer 2020) is advisable which should test all the possible information about proposed expert and their competency in all the relevant cases. This Peer Review College should be a multi-disciplinary scientific advisory panel to advice more studies into what is empirically known about any scientific method in forensic sciences and which will consider indicating further studies to address the deficiencies in any process.

This Peer Review College should consider all the expert witnesses to be engaged in the legal process whether they are appointed by the court or government or are proposed to be hired by any party to the dispute, and even if they are registered experts or non-registered experts(Freer 2020).They may create a predetermined list of experts (Faure and Visscher et al 2016) to be eligible for presentation in the court and to choose expert from the list for any particular case or dispute in the court. In USA a new system of Court Appointed Scientific Experts (CASE) has been considered to appoint neutral scientific experts which can be of assistance to the court (Timmerbeil 2003) but that are not attractive practice for adversarial expert testimony.

**Due Diligence of Lawyers, Government's Prosecution Office, Forensic Regulators, and the Courts**

In this vein it is important to note that in 2019 in UK, the courts have advised to the advocates and the prosecution departments that they must prove the fact that the expert evidence is not outside their skill, and that the parties or prosecution department intending to present expert opinion should disclose in disclosure form that it is their obligation to fulfill duties in respect of expert witnesses proof of skill in their claimed field of knowledge (Freer 2020).

The due diligence of lawyers, prosecution department, and the Forensic Regulators involves disclosure of qualifications experience and accreditation of the experts wherever applicable (Freer 2020). In order to align interest of justice and fair trial, the disclosure by lawyers and government prosecution office should include the information of any past adverse judicial comments which is attracted to their proposed expert's testimony, or history of inadequate scientific evidence during the previous court proceedings (Michell and Mandhane 2005) by that particular expert, and the disclosure of any case in which the expert evidence was presented by that particular expert and subsequently to their testimony an appeal is allowed by reason of deficiency in the expert's evidence (Freer 2020) (Michell and Mandhane 2005). This is called as a disclosure of due diligence aspect by the lawyers before having any reliability based and prior to admissibility test for the expert during the trial in the court (Freer 2020).

Another proposed solution is to add a self-declaration by an intended expert stating scope of practice, professional development, training, special interests, areas of expertise both in general and in relation to the specific case (Faure and Visscher et al 2016) and any conflicts of interest that could impact on their evidence. In this regard, the declaration of their research and publication will also help assess their inclination and expertise regarding the method and to compare their choice of method that they apply and represent in the expert evidence in the case (Michell and Mandhane 2005). Another possibility is to Draft a code of conduct for expert witnesses and mentioning the responsibility of parties; hiring or producing the expert evidence, to convey the code to prospective expert (Michell and Mandhane 2005)and to require a declaration from the experts that they have read and complied with the code provided to them, and that the expert should clearly state and declare further that if they are found to have provided misleading information after such a declaration, they could be liable to professional misconduct proceedings in addition to the possibility of any criminal proceeding against them (Freer 2020).

There is another model to ensure independent and objective expert testimony in adversarial system which is to act as an arbitrator, where both adversarial experts who are hired by both parties agree to appoint a 'third independent expert witness' (Faure and Visscher et al 2016) or

hiring joint experts (Michell and Mandhane 2005). In USA, the court appointed expert will play this role of third independent expert where after the adversarial expert witnesses from both parties, the court can choose to call expert appointed by the court to understand the reliability of method, application of method, and comparing the conclusions drawn by all of these different expert opinions presented in the court (Timmerbeil 2003).

Concurrent expert evidence is another suggestion where're-trial hearing of expert witnesses from both parties is to check probity and admissibility of their evidence in the court as experienced in Canada and Australia (Freer 2020). Additionally, pre-trial expert conference is also a suggestion to focus on points of convergence and divergence among adversarial expert witnesses to enrich impartiality and independence of experts (Michell and Mandhane 2005). As elected panel of legal practitioners may also be assigned duty to short list the expert witnesses in all the relevant cases (Freer 2020).

**Retributive Justice and expert evidence**

Quality and integrity of expert witness are equally important aspects of expert evidence (Freer 2020). In this respect, the signatures as to truthfulness in the expert report by the expert, and their subsequent oath in court as to truthfulness are the instances where these undertakings are not expected to be undermined by the expert, otherwise, the expert evidence is to be discarded(Michell and Mandhane 2005). It is to note that if an expert opinion is found to be misleading; negligently, deliberately or irresponsibly, or if the evidence is dishonest or reckless false statement, then clearly it is likely to bring the relevant profession in disrepute (Friston 2005) which calls for a decision from the relevant regulatory or licensing body to decide to bar such expert from being appointed as expert witness in future for a limited or unlimited time (Freer 2020) in a professional misconduct proceeding(Freer 2020). Lack of integrity is further proved to be intentional and not accidental, when such expert statement is subsequently verified by a statement of truth by the expert witness during the trial so the consequences may be a professional misconduct proceeding advising the loss of business and impairment of fitness to practice and also a criminal sanction in a criminal proceeding (Friston 2005). It is to note that abusing the trust placed in expert and presenting false statement can be taken as a contempt of court as well (Freer 2020) (Friston 2005).

Legal practitioner may be punished in paying wasted cost (Freer 2020) which are costs incurred as a result of improper unreasonable or negligent act or omission on part of representative to employ the expert. It is an order against a lawyer in any situation whether the court or parties calling expert witness (Michell and Mandhane 2005). Paying other party's cost due to improper act of a legal representative is wasted cost order, in other words it is prosecuting authority to cover costs incurred by the defense, and hiring unqualified expert is an improper act. Failure to thoroughly research about competency and experience of any expert would be an improper omission practiced by advocate from any side who has hired such expert. (Freer 2020)

Moreover, a serious misconduct by third party which is not to be regarded as a contempt of court will attract a Third-Party costs Order (hereinafter as TPCO) against such third party which can be an expert witness. It is because the cost incurred by a party to criminal proceeding because of a person who is not a party to those proceedings, will definitely cover an expert who may be asked to pay (Michell and Mandhane 2005) as TPCO in the case where the trial was abandoned

because of incompetency of such third party; which is an expert (Friston 2005). This TPCO may be made on the application of any party to the dispute or on court's own initiative (Freer 2020). This TPCO may be ordered in all matters which may come within disclosure obligations, and in case if truthful facts are not disclosed by party or expert, then court will inquire into the matter of non-disclosure and may exclude the expert evidence. This is because the act of giving evidence under declarations and statements of oath, for truthfulness (Michell and Mandhane 2005), whether it is deliberate or reckless (Friston 2005), attracts the order for a contempt of court and there can be another option for the suit of false statement either the breach of oath for truthfulness is identified at earlier stage of the case or at the end of the case, in all circumstances it undermines the criminal justice system and it is serious breach of trust to do such an act for a large or small sum of money paid by the parties(Timmerbeil 2003). It is to state that because expert has breached the trust at all the possible levels of court proceedings including; firstly, writing a report under a declaration, secondly, statement of truth (Friston 2005), and thirdly, giving evidence in the court, and it can be surprising that at any of these stages the expert did not tend to point out the mistake instead their conduct proves their malaise or partisan biased opinion all by itself.

Therefore, it can be alleged that the public confidence is affected (Freer 2020) and that the expert has purported to pervert the course of justice by giving evidence of the fact out of their expertise. It is argued to allege the connivance of the prosecution as well which means that the prosecution will be found in connivance with the expert to pervert the course of justice (Freer 2020). False representation (Freer 2020) may be alleged in that writing a report and then giving evidence in court are two attempts of the expert and prosecution to induce the belief of the court in the competency of incompetent expert evidence and to take it into account for the purpose to decide the case. In this regard, the letter of advocacy will reveal the accomplice factor of the lawyer and the sum of money for which this expert was hired to give false evidence and to misguide the court. This charge of false representation (Michell and Mandhane 2005) will include a deliberate or negligent failure to attend their duties as advocates and party to the dispute. It is observed that the order for Wasted Cost Order (Freer 2020) will prevent the expert and parties to the dispute from engaging in fabrication of the expert evidence. This will also promote the notion of due diligence among the hiring parties (Freer 2020).

Moreover, the Waste Cost Order will do financial and business loss to lawyer as well and eventual exclusion of evidence, both would affect the interest of the claimant in the case. Additionally, it is to note that in case if the judgment passed on false evidence then there are glaring chances that it could be overturned in the appeal leading to delay, uncertainty and a retrial (Freer 2020). It is argued (Freer 2020) that the exposing the conduct of presenting a false evidence and ensuring that the wrongdoers will not be further hired in future (Michell and Mandhane 2005), will result in the practice of parties hiring such experts be doing more effort in scrutinizing and attending the proper due diligence in future (Freer 2020).

## Conclusion

In conclusion, this article suggests that the commissions, committees consisting of scientific experts and agencies, legal and judicial experts should work together prescribing the guidelines, setting the standards to track pre-trial, during trial activities of expert witnesses. As a result, the system will have an added benefit to guide and train the experts for the best practice in giving

expert evidence(Etherton and Cook et all 2010), and they will also be prepared for what to expect and how their opinion is to be processed in the courtroom. It will serve another purpose that the legal actors; Bench and Bar both, should also understand what their role in application of these standards for the expert witnesses is leading to uplift the confidence of litigants in the criminal justice system of Pakistan. Certainly, it will help parties avoid waste of time and cost on hiring incompetent expert witness. Above all, if expert witnesses are prepared to understand the lawful expectations from their expert opinion in the courtroom, their testimony would be prepared following the standards and protocols.

It is to infer that in science the reliability means the consistency and repeatability in such a way that if a test produces same result on successive applications it is called a reliable test. On the other hand, if the test produces accurate results it is called valid scientific knowledge (Mnookin and Samuel 2003). In that vein, the Daubert test, as mentioned in the sections above, meant for reliability and not for validity or trustworthiness of expert evidence (Daubert vs. Merrell Dow Pharmaceuticals, Inc., 1993). Their reliability test in Daubert does not distinguish between validity and competence rather blends them, consequently in USA if evidence is reliable then court can trust it (Mnookin and Samuel 2003).

However, the reliability is merely a prerequisite, and scrutiny for bias goes to weight and probative value of the expert evidence, and this process signifies that it not plausible to support the exclusion of scientific evidence without considering these steps (Michell and Mandhane 2005). As in UK the removal of bias is done through the cross examination and the rebuttal of evidence to expose the false statement before deciding a case merely on reliability of scientific expert evidence (Etherton and Cook et all 2010).However it is argued that adversary system in itself if allowed to be adversary in its true sense it will solve this issue all by itself during cross examinations. However, the abuses of expert opinion caused by lack of following duties and responsibilities of expert opinion lead to a disaster of criminal justice system producing false convictions and it will destroy lives of many innocent (Mnookin and Samuel 2003).

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