EXPERT OPINION IN MEDICAL NEGLIGENCE CASES: A CRITICAL ANALYSIS

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ABSTRACT

Expert opinions in medical negligence cases are often used as a trump card in proving medical negligence cases. In India, the courts rely to a great extent on the expert opinion given by medical experts in medical negligence litigation. Expert advice in litigation is usually sought when there is a technical question involved which requires the expertise of a person who has authority over the subject matter concerned in terms of observation, descriptions, and analysis. Medical negligence litigation is one such area where an opinion deposed by a medical expert plays a vital role in fixing liability. But very often, the courts face a dilemma in deciding the extent to which medical expert testimony is admissible in deciding a case of medical negligence. This article examines the role of medical experts in negligence lawsuits, the challenges they face, and the admissibility of their opinions in court. The research methodology uses a library-based approach, mainly focusing on primary and secondary data sources.

Keywords*: Medical Negligence, Expert Testimony, Expert Opinion, Bolam Test*

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I. Introduction

NEGLIGENCE IN Tort law is defined as the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.[1] "Medical Negligence" is referred to as wrongful actions or omissions of professionals in the field of medicine, in pursuit of their profession, while dealing with patients. This term as such is not specifically mentioned in any statute in India. In the case of medical negligence, certain key points are to be considered by the courts. These are the existence of a reasonable duty of care by the medical practitioner, breach of such duty, and injury or damage sustained resulting from the breach of such duty. To prove the technical questions regarding these three points, which form the fulcrum of medical negligence cases, the courts in India very often rely upon 'expert evidence'.

As mentioned in *Laxman Balkrishna Joshi (Dr.)* v. *Dr. Trimbak Bapu Godbole*[2] and *A.S. Mittal* v. *State of U.P.*[3]A doctor or a medical practitioner, among others, has a duty of care in deciding whether to undertake the case or not, duty in deciding what treatment to give, duty of care in the administration of that treatment, a duty not to undertake any procedure beyond his or her control, and it is expected that the practitioner will bring a reasonable degree of skill and knowledge and will exercise a reasonable degree of care.[4] When there is a breach of any one or more of these duties the medical professional is said to have committed the act of medical negligence. In India, the test to be applied for deciding whether the person charged with Medical Negligence is guilty of the act or not would be that of a reasonable person or an ordinary competent professional of that field.[5]

[1] Ratanlal and Dhirajlal, *The Law of Torts* 441- 442 (Lexis Nexis, 2018).
[2] AIR (1969) SC 128.
[3] AIR (1989) SC 1570.
[4] *Ibid.*
[5] *Sunita Saxena* v. *Medical Superintendent*, 2023 SCC OnLine NCDRC 47.

In *Poonam Verma* v. *Ashwin Patel*,[6] negligence has been given many manifestations, "it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, willful or reckless negligence or Negligence per se, which is defined in Black's Law Dictionary as under negligence per se:[7]

> Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it.

Indian judiciary plays a significant role in trying to bring the delinquent medical practitioners under liability for negligence, by providing the aggrieved persons with several remedies within its ambit. The motivation for people bringing actions for medical negligence varies, few sue for money; others sue to retribute medical practitioners who are at fault by ensuring criminal liability; and few others bring action for prevention of such negligence in the future through disciplinary actions against the accused medic. Irrespective of the reason, the courts in India strive to render justice in medical negligence cases through timely and case-appropriate interventions.

II. Medical Negligence Litigation in India

Medical negligence complaints in India are usually received by the State Medical Councils (*hereinafter* referred as 'SMC'), under which the accused doctors are registered. A medical board is then formed, which comprises a competent set of experienced medical professionals who then examine the authenticity of allegations made against the accused professional and based on genuine grounds, the accused doctor may be either suspended or debarred from carrying out further practice. The order of the State Medical Councils can be appealed to the

[6] (1996) 4 SCC 332.
[7] *Ibid.*

Medical Council of India (*hereinafter* referred as 'MCI') by the patient or the doctors. If the aggrieved party chooses to move forward with a criminal type of complaint then the affected person can file a complaint with the local Police Station. However, expert opinion confirming prima facie negligence will be required to register any police complaint.[8]

The punishment awarded by the MCI may range from giving a warning and cautioning the doctor/doctors who are found guilty to removing their names from the Indian Medical Register/ State Medical Register for a specific period. The order of the MCI can be appealed to or can be challenged in a court of law by the aggrieved party. Medical Negligence can also be afforded as a civil wrong under the Consumer Protection Act 1986, where a case of deficiency of services may be taken to a Consumer Dispute Redressal Commission (*hereinafter* referred as 'CDRC') for imposing a civil liability through a compensation claim.

The doctor who is held negligent for his act can also be brought under criminal liability through the provisions of the Indian Penal Code, 1860 which are common statutory penal provisions for all crimes committed within the Country. Section 304A of the IPC[9] deals with persons who have caused death by acting in a rash and negligent manner while they carry out their duties, section 337 of the IPC[10] deals with causing hurt by acts endangering the life or personal safety of others, and section 338 of IPC[11] which deals with causing grievous hurt by acts endangering life or personal safety of others, are the provisions commonly used by Indian criminal courts in bringing about criminal liability against a delinquent medical professional.

III. The Inevitable Bond of Bolam and Bolitho

The test that has been adopted universally in ascertaining the liability of a medical professional is known as the *"Bolam Test".* This Principle which has its origin from the English Tort Law, lays

[8] Government of India Department of Consumer Affairs Ministry of Consumer Affairs, Food & Public Distribution, National Consumer HelpLine (NCH), Medical Negligence (FAQ's),*available at:*https://consumerhelpline.gov.in/faq-details.php?fid=Medical%20Negligence (last visited on June 24, 2022).
[9] Indian Penal Code 1860, s.304A - Causing death by negligence.
[10] *Id.*, s.337 - Causing hurt by act endangering life or personal safety of others.
[11] *Id.*, s.338 - Causing grievous hurt by act endangering life or personal safety of others.

down the typical rule for assessing the appropriate standard of reasonable care in negligence cases involving skilled professionals such as doctors.[12] Judge McNair in the verdict in *Bolam* v. *Friern Hospital Management Committee*[13] stated that, "A doctor is not guilty of Negligence if he acted by a practice accepted as proper by a responsible body of medical people skilled in that particular art[14]". In India, this rule has been vividly discussed in medical negligence cases such as *Laxman Balkrishna Joshi (Dr.)* v. *Dr.Trimbak Bapu Godbole,*[15]*Jacob Mathew* v. *State of Punjab*[16] and *Indian Medical Association* v. *V.P. Shantha,*[17] where the necessity of conforming an alleged medical practitioner's actions to the standards of a responsible medical board has been discussed in lengths. But as such, this rule alone cannot be relied upon as it gives a lucid leeway to clinical staff in driving away liability in medico-legal cases.

The "Bolam test" has been the subject of academic debate and evaluation in India and other countries. Among scholars, the Bolam test has been criticized because it fails to make the distinction between the ordinarily skilled doctor and the reasonably competent doctor. The former places emphasis on the standards adopted by the profession, while the latter denotes that negligence is concerned with departures from what ought to have been done in the circumstances and may be measured by reference to the hypothetical "reasonable doctor". The Court must determine what the reasonable doctor would have done and not the profession.[18]

After the formulation of the Bolam test, English Courts formulated a significantly graduated doctrine about the standard of care. In *Maynard* v. *West Midlands Regional Health Authority,*[19] Lord Scarman held that:[20]

> A case which is based on an allegation that a fully considered decision of two consultants in the field of their special skill was negligent presents certain difficulties of proof. It is not enough to show that there is a body of competent

[12] *Bolam* v. *Friern Hospital Management Committee* (1957) 1 WLR 582.
[13] *Ibid.*
[14] *Id.,* at 3.
[15] *Supra* note 1.
[16] (2005) 6 SCC 1.
[17] 1996 AIR 550; 1995 SCC (6) 651.
[18] *Arun Kumar Manglik* v. *Chirayu Health & Medicare Private Ltd.,* 2019 (7) SCC 401
[19] (1985) 1 All ER 635.
[20] *Ibid.*

> professional opinion which considers that there was a wrong decision if there also exists a body of professional opinion, equally competent, which supports the decision as reasonable in the circumstances.

Later in *Bolitho* v. *City and Hackney Health Authority*,[21]Lord Browne Wilkinson took the view that an adjudicating authority could be permitted to choose between two conflicting expert opinions and could reject one of those opinions if it was not logically defensible.[22] This test popularly came to be known as the Bolitho test which focused on restricting the boundaries of the Bolam Test. In India, medical negligence cases are decided on a balanced application of both these tests as neither of these tests can be alienated completely. Matters about the involvement of medical experts are decided based on 'complicated' and 'non-complicated' cases as mentioned in *V. Kishan Rao* v. *Nikhil Super Specialty Hospital*[23] most of the cases encounter clefts between expert opinions.

Judicial forums in India, be it criminal courts, civil courts, or consumer forums, adjudicating medical negligence cases highly rely on 'expert evidence' given by medical practitioners. The laws in India acknowledge the role of deference when dealing with subjects in which judges and lawyers may not possess any expertise, by allowing them to refer to expert opinion by the Indian Evidence Act, 1872.[24] In *Dr. Martin D'Souza* v. *Mohd Ishfaq*,[25] the court upheld the importance of considering the opinions given by medical experts to ascertain the standard of negligence in a medical negligence case. Experts increase the amount of information available to a judge to make the right decision. However, expert evidence can never take away the authority of the court as being the final arbiter.[26] This is because the courts often encounter instances of cleavage of opinions where they choose to err on the side of caution.

[21] *Bolitho* v. *City and Hackney Health Authority* (1996) 4 All ER 771.
[22] *Ibid.*
[23] (2010) 5 SCC 513.
[24] M. P. Ram Mohan and Vishakha Raj, "Medical Negligence and Law: Application of Bolam and Bolitho rules in India" 54(42) *Economic and Political Weekly* (2019).
[25] (2009) 3 SCC 1.
[26] *Dayal Singh* v. *State of Uttaranchal*, AIR 2012 SC 3046; 2012 (8) SCC 263.

IV. Medical Expert: the Astute Counselor in Litigation

In medical negligence litigation proving the element of 'breach of duty to care' forms the crux of proving medical negligence cases. The courts in such cases seek guidance from medical experts to derive answers to the technical questions involved in a particular case to ascertain the extent of liability arising out of negligence. According to section 45of the Indian Evidence Act, 1872,[27]an expert is an independent person with specialist knowledge who is requested, by a party to the proceedings or the court, to provide opinion evidence mostly on the aspect of a case. Experts used in medical negligence cases are usually medical practitioners with considerable training and expertise in their field of specialization. The discretion of determining the skill, ability, learning, and sufficiency to exercise and practice the medical profession is entrusted to the College of Physicians.[28] The court shall not interfere nor interrupt them in the due exercise of this discretion at the same time their conduct in the exercise of this trust ought to be fair, candid, and unprejudiced; not arbitrary, capricious, or biased, much less, warped by resentment or personal dislikes.[29]

Expert evidence assists the court in deciding whether a doctor, hospital, or health care provider should be held legally responsible for a person's death or injury. Most importantly, the Court usually needs assistance in deriving legal conclusions on whether the doctor, hospital, or health care provider failed to exercise reasonable care and skill at the time of rendering medical services (breach of duty) and, whether such breach of duty resulted in death or injury.

V. Position of Medical Experts in Medical Negligence Litigation

In civil suits of medical negligence, where the aim is to compensate for the damage caused, a simple proof of breach of duty to care on the part of a medical practitioner is sufficient to invite civil liability.

[27] The Indian Evidence Act 1872, s. 45 - Opinions of experts.
[28] Field's, *A Legal Treatise on Expert Evidence; A Practical Voir Dire* 128 (The Delhi Law Book Agency, 2022).
[29] *P.T.C. India Ltd. Formerly Power Trading Co.* v. *Gujarat Urja Vikas Nigam Ltd.*, 2008(2) GLH 654 (Guj).

An aggrieved person can also bring an action under the Consumer Protection Act, 1986 for deficiency of services by a medical professional to seek compensation. The person who intends to initiate a case under the Consumer Protection Act 1986 (Amended in 2019) can file a complaint with the District Consumer Dispute Redressal Commission and if either of the parties to the complaint is not satisfied with the decision can appeal to the State or National Commissions. The procedures carried out in redressal forums are usually summary trials and because of this admissibility of expert opinions as evidence is mandated only in cases involving complicated technical issues. In *Malay Kumar Ganguly* v. *Dr. Sukumar Mukherjee*[30] the Supreme Court was of the view that the provisions of the Evidence Act are not applicable and the Fora under the Act are to follow principles of natural justice. Expert evidence is necessary when Fora concludes that the case is complicated or such that it cannot be resolved without the assistance of expert opinion.

The Supreme Court reiterated this point in *V. Kishan Rao* v. *Nikhil Super Specialty Hospital*[31] where it was held that, before forming an opinion that expert evidence is necessary, the Fora under the Act must conclude that the case is complicated enough to require the opinion of an expert or that the facts of the case are such that it cannot be resolved by the members of the Fora without the assistance of expert opinion.[32] In this regard, the court made the following observation:[33]

> This Court makes it clear that in these matters no mechanical approach can be followed by these Fora. Each case has to be judged on its facts. If a decision is taken that in all cases medical negligence has to be proved based on expert evidence, in that event the efficacy of the remedy provided under this Act will be unnecessarily burdened and in many cases, such remedy would be illusory.

Coming to the point of fixing criminal liability in medical negligence cases, the question of authority between medical evidence and ocular evidence is often a subject of debate. Ocular evidence or evidence produced by an eyewitness is dealt with under section 3 of the Indian

[30] AIR 2010 SC 1162.
[31] *Supra* note 23.
[32] *Ibid*.
[33] *Ibid.*

Evidence Act, 1872,[34] which speaks about direct evidence whereas, evidence provided by medical experts is discussed under section 45 of the Act which speaks about opinions of experts. The evidentiary value of medical expert opinion becomes significant in the courts only in cases, where they are in contradiction to other direct evidence. The courts in India often choose to prefer ocular evidence or direct oral evidence, over that of opinions rendered by medical experts, placing the latter at a lesser footing. This is first because it is believed that the statement of an eyewitness under oath is truthful unless it can be proven beyond reasonable doubt that the evidence or the testimony by the eyewitness is fallacious and unreliable.

Secondly, opinion evidence according to the Indian Evidence Act is admissible only to the extent of its corroboration with either clear or direct evidence or with circumstantial evidence. The tenets of opinion evidence are discussed under section 45 to section 51[35] of the Indian Evidence Act 1872. The courts cannot solely rely upon expert opinion invalidating other evidence, as the evidence given by the expert is only an opinion. Opinion evidence can never supersede the proof of substance, because of which there can never be absolute accuracy in the opinion expressed by a medical practitioner because the expert is restricted to expressing his opinions upon the data placed before him and not according to the entire facts of a case.

Thus, the courts in India consider opinion evidence to be received with great caution. In *Pruthiviraj Jayantibhai Vanol* v. *Dinesh Dayabhai Vala.*[36] It was held by the apex court that ocular evidence is considered the best evidence unless there are reasons to doubt it. The court also observed that only in a case where there is a gross contradiction between medical expert opinion and oral evidence, and the medical expert opinion makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved.[37]

[34] The Indian Evidence Act 1872, s. 3(1) – Definition of Evidence.
[35] The Indian Evidence Act, 1872, s.51 - Grounds of opinion, when relevant.
[36] AIR 2021 SC 3532.
[37] *Id.*, at para 17.

VI. Need for Medical Experts in Medical Negligence Litigation

From the discussions above, we can see that there exists, to an extent, inconsistency in the interventions made by the courts about the perusal of expert opinions in medical negligence litigation. In medical negligence litigation, the onus of proving the negligence lies on the party who is aggrieved. However, most of the cases that come to the judicial forums fail due to the absence of expert evidence. In *Dr. Harkanwaljit Singh Saini* v. *Gurbax*[38] it was held that, "The Commission could not contradict the statement of the doctor unless there was something contrary on the record by way of an expert opinion or there was any medical treatise on which reliance could be based[39]". In another case that came to the National Consumer Dispute Redressal Commission (*hereinafter* referred as 'NCDRC'), an appeal was dismissed in the case of alleged medical negligence as no expert evidence was produced.[40] In *Director, Rajiv Gandhi Cancer Institute and Research Centre,*[41] then National Commission held that:[42]

> As per the settled law, the onus to prove that there was negligence or deficiency in service on the part of the opposite parties while diagnosing and treating the Complainant, lay heavily on the Complainant. In the given facts, the Complainant has failed to discharge the onus that was on him. The complaint was dismissed as the Complainant failed to discharge the onus to prove negligence or deficiency in service.

This brings us to the question as to why the complainants fail to furnish expert evidence. This in turn leads to another question as to what are the reasons for experts not rendering their opinion to the aggrieved parties. It is important to note that questions about technical aspects such as the diagnosis, the dosage of medicine administered, the procedure carried out on a patient, and the medical parameters, *etc.* of a particular case can never be adjudged by a court according to its

[38] 2003 (I) CPJ 153 (NC).
[39] *Id.*, at para 6.
[40] *N.S. Sahota* v. *New Ruby Hospital,* 2000(II) CPJ 345.
[41] 2003 (I) CPJ 305.
[42] *Ibid.*

prudence and neither can the party aggrieved prove it without relying on opinions of an expert. In such cases the opinion rendered by medical experts becomes relevant.

VII. Challenges faced by medical experts in India

A physician who acts as an expert is supposed to expose without fear or favour unethical conduct on the part of professional colleagues that comes to their notice whether in day-to-day work or as an 'expert' member of the Medical Board when the occasions arise mandatorily following the provisions of the MCI Ethical Regulations, 2002 in this regard.[43] But as the burden of proving negligence lies on the aggrieved party, it becomes necessary for them to prove that there was prima facie negligence on the part of the accused medical practitioner. Very often, in such cases, medical practitioners refrain from testifying against a fellow doctor, which puts the aggrieved party in distress. Courts in India while trying to identify the extent of negligence in medical negligence cases, try to strike a careful balance between the autonomy of a doctor to make judgments and the rights of a patient to be dealt with fairly.

While the process of adjudication is carried out, we often find that the judicial forums tend to give adequate latitude to doctors and expressly recognize the complexity of the human body, inexactness of medical science, the inherent subjectivity of the process, genuine scope for error of judgment, and the importance of the autonomy of the doctors when the fact is that law does not prescribe the limits of high standards that can be adopted but only the minimum standard below which the patients cannot be dealt with.[44] Also, there are no prescribed laws that expressly spell out guidelines in dealing with and protecting the identity and anonymity of medical experts and the deposition of expert opinions. Due to the lack of a proper legal framework, obligation of brotherhood and other plethora of reasons the authenticity of opinions expressed by medical practitioners in judicial forums often deter the quality of evidence, which in turn steer medical negligence litigation to the doldrums.

[43] Mukesh Yadav, "Is there a Need for 'Expert Opinion' in Consumer Court Cases?" (2021), *available at:* https://www.researchgate.net/publication/354461150_Is_there_Need_for_'Expert_Opinion'_in_Consumer_Court_Cases (last visited on February 17, 2024).
[44] Amit Agarwal, "Medical Negligence: Indian Legal Perspective" 19 *Ann Indian Acad Neurol* (2016).

The above-mentioned factors give rise to several problems, the major one being the absence of a neutral, unbiased, and independent external regulatory body to hold doctors alleged of medical negligence, accountable for their actions. Also, doctors mostly tend to refrain from questioning other doctors when it comes to deposing expert evidence in furtherance of fellowship and respect for their community. In cases of medical negligence, the incompetence of doctors in their profession is usually judged by a group of doctors only and not by any external, unbiased, independent body. This situation may bring about conflicting interests among and within the doctor's community.

Medical professionals who testify in medico-legal cases as expert witnesses are prone to certain potential risks on their professional front as well. Medical professionals testifying in a medico-legal case may often be subject to expert scrutiny where if the testimonies rendered by them are challenged or discredited by other experts in the field, it may negatively impact their professional reputation. They also tend to walk away from expert witnessing due to the fear of unpleasant courtroom experiences. Rendering testimony in high-profile cases sometimes puts the medical expert under public scrutiny which may attract unwanted attention and sometimes backlashes. Doctor-patient relationship and patient confidentiality are two major ethical obligations that a medic owes their duty to and striking a balance between one's duty towards the court with patient confidentiality and ethical obligations can be quite challenging for regular medical practitioners who testify in courts.

Another major challenge that medical professionals face during expert witnessing is the risk of confirmation bias where the medical professionals tend to interpret data or information in such a way that it aligns with their pre-existing beliefs or the party for which they are testifying. This may adversely affect the opinions rendered by the experts leading to a biased, one-sided representation of medical evidence which may defeat the very purpose of expert testimony.

Due to these inherent biases and ethical dichotomy, there is a lack of an unbiased and independent group of medical experts who may, without fear and favour and utmost objectivity, express their opinions in Medical Negligence Cases. This scenario leads to inconsistency in judicial standards of ascertaining the extent of negligence and deference, paving the way to

medical negligence cases going unpunished. The immediate impact of this arrangement is that the percentage of prosecution and success rate of medical negligence cases in Indian judicial forums are almost negligible.

VIII. Towards Betterment

Like medical science, law is an inexact science. A person can never predict with one hundred percent accuracy the expected outcome of a case. The winning of a case depends heavily on the facts of the case backed by evidence. The personal notions of the Judge who is hearing the case also play a significant role. But when it comes to medical negligence cases broader and deeper understanding regarding the general principles relating to medical negligence is required. This is where independent medical experts play a vital role. Lack of unbiased technical expertise may give rise to numerous problems. Judges are not experts in medical science, rather they are laymen. The use of technical jargon often makes it difficult for them to decide cases relating to medical negligence. Besides, Judges are forced to rely on testimonies deposed by expert doctors, which may not be objectively relevant in all cases.

Just like other professions, doctors too tend to support their fellow professionals or colleagues who are accused of medical negligence. This may in turn tamper with the efficacy of passing judicious pronouncements. At the same time, indiscriminate proceedings and decisions against doctors may prove counterproductive and will not do well forsociety.On a careful analysis of the discussions above we find that there is an imminent threat of manipulation that reflects the current system of expert witnessing in medical negligence litigation in India. Because of the inconsistency of judicial interventions concerning expert testimonies provided by medical experts, and the lack of unbiased independent expert opinions, medical negligence cases pose weaker chances of success, without providing the aggrieved persons with adequate remedies.

A well-crafted legal framework that can protect and preserve the identity and anonymity of medical practitioners defines the role of medical experts and the validity of their opinions and an independent medical regulatory body that can check on the actions of an alleged medic in medical negligence litigation can to an extent eliminate the obstacles faced by medical

negligence litigants in India. In case of cleavage of opinions among expert witnesses in litigation, medical expert opinions adduced by the court may be subject to a blinded peer review by other experts of the relevant field of medicine by maintaining utmost confidentiality and anonymity of the identity of the experts who rendered the same. This may increase the value, credibility, and objectivity of the medical expert witnesses and their testimonies.

Setting up Expert Witness Institutes (EWI) similar to those of the United Kingdom and the United States of America may prove effective in providing training and credibility to expert witnesses during litigation by setting up standards for continued training, certification, and ethical conduct for expert witnesses. Expert witnesses thus accredited by recognized institutes would likely carry more credibility in the eyes of the judiciary, legal practitioners, and the public. This may in turn help in avoiding bias and coercion exhibited by the expert witnesses enhancing the value and trustworthiness of expert testimonies in courtrooms. Bringing expert witnesses as part of the medical profession and promoting professionalism and competence among expert witnesses can contribute to the fair administration of justice.

IX. Conclusion

To conclude, the role of expert opinions in medical negligence cases stands pivotal to legal proceedings yet complex. As explored through this critical analysis, the courts heavily rely on the expertise of medical professionals to determine liability in cases of alleged medical negligence. The Bolam and Bolitho tests popularly used to ascertain the credibility of expert opinions across jurisdictions have provided frameworks for assessing standards of care, but their application has been subject to debate and scrutiny, highlighting the inherent challenges in navigating the complexities of medical malpractice litigation.

Throughout this discourse, it becomes evident that the admissibility and weight given to expert opinions vary across different legal forums, be it criminal courts, civil courts, or Consumer Dispute Redressal Commissions (CDRC). While expert testimony is crucial in illuminating technical aspects of medical cases, its efficacy is often hindered by factors such as confirmation

bias, professional solidarity among doctors, and the absence of an impartial regulatory body to oversee expert opinions.

The challenges faced by medical experts, including the risk to their professional reputation and the ethical dilemmas inherent in expert witnessing, underscore the need for reforms in the current expert witnessing system. Establishing standardized protocols for expert witness training, certification, and ethical conduct similar to practices in other jurisdictions, could enhance the credibility and objectivity of expert testimonies. Moreover, ensuring anonymity and confidentiality for expert witnesses could foster a favourable environment for unbiased opinions.

Moving ahead, in medical negligence cases, admissibility of medical expert testimony and the protection of the rights and identity of medical expert witnesses are essential components of transparent litigation. Currently, there exists a pressing need for a well-crafted legal framework that can uphold the integrity of expert opinions at the same time safeguarding the interests of various stakeholders involved. By addressing the deficiencies in the current system and promoting professionalism and competence among expert witnesses, we can strive towards a fairer administration of justice in medical negligence litigation. Ultimately, the pursuit of justice demands a collaborative effort from legal and medical communities to uphold the highest standards of accountability and patient care.