

DATA ANALYSIS AND INTERPRETATION: RETROPECTIVE STUDY

(Judgements on Medical Malpractice with respect to the Consumer Protection Law)

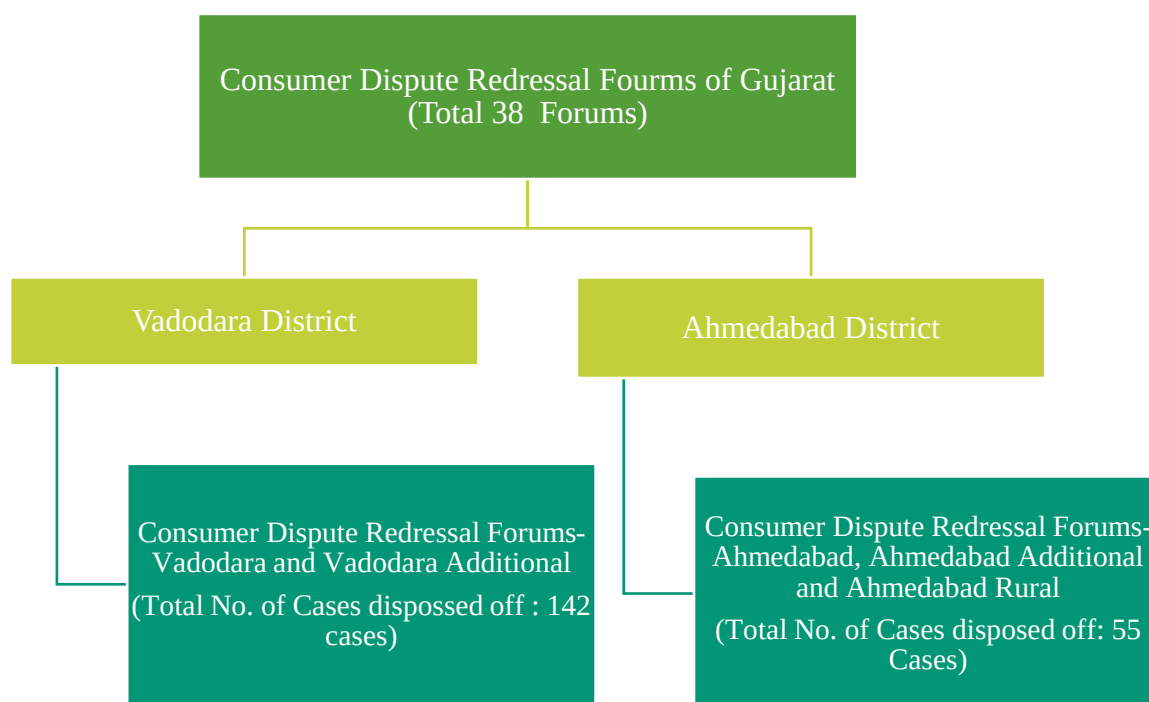
The previous chapter explained in detail the research methodology adopted to carry out the research. As provided in the brief outline of the methodology, the research was conducted in **two phases**. In phase I, assessing the current scenario through actual case studies were conducted and based on the findings from Phase I, phase II studied the stakeholders i.e the Medical Service Users and Medical Service Provider.

This chapter includes the finding from Phase I i.e., the analysis of the Judgements on Medical Malpractice with respect to the Consumer Protection Act. Any law is an instrument for social change. It cannot be static, rather it has to change constantly with the changes in society. Considering the Consumer Protection Act, 1986, primarily enacted for protecting the rights of consumers, establishing the Consumer Dispute Redressal Forums for speedy redressal of the consumer disputes. However, as elaborated in the previous chapter, did not include medical as a field within the definition of ‘**service**’. In case of deficiency in medical services or unfair trade practices, a patient was not considered as the consumer and hence, could not approach consumer dispute redressal machinery. However, the landmark judgement by honorable Supreme Court of India, *Indian Medical Association vs. V. P. Shantha and Others (1995) 6 SCC 651*, medical profession was considered within the purview of services.

As discussed above in the methodology, this retrospective study of the cases attempts to analysis the judgements already passed related to medical negligence or medical malpractice from the District Consumer Dispute Redressal Forums. The research does not include any case which is sub-judice or those who went for the appeal. All the cases had at least gone through the legal process and the first judgement was passed from the District Consumer Dispute Redressal Forums, Vadodara and Ahmedabad. This chapter identifies certain parameters based on the objective of the study, which can be the enabling points to read and understand the opinion of the alternative dispute redressal system. The careful study of the judgements helps understand the trends in terms of the number of judgements on Medical Negligence, rate of conviction, Time duration for justice, types of negligence and malpractice and the basis of judgements.

The universe for this part of research consisted of all the complaints filed in all 38 consumer dispute redressal forums of all the district of the Gujarat State.

For the context of selecting a sample from the judgements, Using **Cluster sampling**, central cluster of the Gujarat state has been chosen. The judgement related to cases of Medical negligence passed from the Consumer Dispute Redressal Forums of Ahmedabad and Vadodara from the 1st April, 2015 to 31st March, 2023 i.e. 8 years have been analyzed for the purpose of this research. Initially at the time of devising methodology, only 5 years data was decided to be selected i.e. from 2015-2020. However, research being progressive in nature, the judgements passed till the time of presenting synopsis has been included. A total of **197** orders related to Medical Malpractice have been studied from the Consumer Dispute Redressal Forums of Ahmedabad, Ahmedabad Additional, Ahmedabad Rural, Vadodara and Vadodara Additional.



(Total 197 Cases of Medical Negligence/Malpractice disposed of between 1st April 2015 to 31st March 2023)

All these cases were studied through **secondary data**. This chapter provides the details of 43 the cases disposed of from the Consumer Dispute Redressal Forums of Vadodara and Ahmedabad in which the medical negligence was proven to understand about the qualitative aspects of the cases. The chapter then focuses on highlighting the trends identified in terms of number of judgments passed, rate of conviction, types of medical ailments, type of

negligence/malpractice, compensation provided and time duration between filing of the cases and case disposal based on thorough review of these cases.

Unveiling Medical Negligence: Case Descriptions

It is important to understand that as per Section 2 (5), ‘**complainant**’ means – a consumer; or any registered voluntary consumer association; or central government or state government; or the central authority; or one or more consumers having same interest; legal heir or legal representative in case of death of consumer; or parents or legal guardian in case of consumer being minor.

The **opponent** means the person or the institution against whom the complaint is registered.

The cases presented below are distributed based on the medical ailment in the cases where the medical negligence was proven. For the purpose of case presentation and protect the dignity of practicing medical practitioners and patients, only the initials of their name are written in this chapter. The time duration of the cases disposed of are from 1st April 2015 to 31st March 2023:

1. Eye-related Ailment:

Negligence in Laser treatment

Case	J.N., R.S.B. vs. Dr. T.S.
Consumer Complaint No.	374/2011
Consumer Dispute Redressal Forum	Vadodara Additional
Medical Ailment	Laser treatment in eye
Date of filing	10/6/2011
Date of disposal	1/8/2016
Duration of Justice	5 years 2 months
Compensation Amount	Rs. 141,200

Description of the case:

It is important to note that the original complainant was complainant no. 2 (aged 55 years) who filed the complaint through JN (complainant no. 1- a voluntary consumer organization).

Looking at the attractive advertisement at the opponent’s health center of being free from contact lens/glasses, the complainant visited the opponent on 21/7/2009. The doctor was

running Laser Centre in the name and style of VP. The complainant paid Rs. 300 as consulting fees for examination of both the eyes and the doctor advised him of laser treatment for removal of numbers in eyes.

On 30/7/2009, the complainant paid Rs. 17000 for the surgery charges. After the surgery, the opponent went on 31/7/2009 for further examination. He complained the opponent doctor that he was unable to see properly with the left eye. Despite the advice from the doctor, there was no improvement in the vision of left eye. The opponent doctor wrote to another well-known Ophthalmologist especially Eye corneal specialist Dr. M for getting their opinion on 30/9/2009.

Dr. M checked the eyes and advised to continue the same drops. When the complainant was not seeing any improvement, the opponent doctor advised him to visit Dr. H. S. who examined him on several dates. Despite no improvement, the opponent advised the complainant to visit Dr. V. A. at Mumbai. Dr. A. examined the complainant and took the consulting charges of Rs. 2000. When the complainant requested to reduce the charges, he took Rs. 1600 as consulting charges without any receipt.

The complainant alleged the opponent doctor that due to negligence in the operation, he lost his vision. With glasses, he was not able to see properly. The complainant incurred huge expenditure for the treatment but could not get their vision in the left eye. Due to lesser vision, the complainant was not able to do his routine work and was mentally harassed. There was **deficiency in services** by the doctor while operating on the eye of the patient.

When the complaint was filed in the Consumer Dispute Redressal Forum, the opponent doctor neither filed their written reply nor was present any time.

Consumer Forum's Observations:

The consumer forum, considering the above chronology of events concluded that due to negligence in the surgery, the complainant had to incur further costs of visiting other doctors and lost the vision as well. The opponents were ordered to pay compensation of Rs. 75000 towards the vision loss of left eye with 9% interest from the date of 10/6/2011, Rs.25000 for mental agony and harassment, Rs. 31,200 towards expenditure of treatment and Rs. 10,000 towards the cost of legal proceedings.

Blinded by Negligence: The tragic toll of Medical Negligence in Vadodara's Eye Hospital

In the distressing series of events between 1995 to 2000, 17 victims of the Cataract operations lost their eyes at the hospital- J.C.K. and S.V.E.H. at Vadodara. All the victims approached District Consumer Dispute Redressal Forum of Vadodara Additional through J.N. - a Voluntary Consumer Organization.

The victims were belonging to the city and other villages of the district and included 11 men and 5 women from the age group up to 75 years. All the victims belonged from poor families who paid Rs. 150 to Rs. 250 for the consulting charges in the hospital. The details of these cases are as the case below. All the victims were treated for cataract, which failed as the victims' developed infections as the doctors and the staff used unsterilized equipment, fixed non-standard lens, and untrained staff. Since, type of negligence was the same in all the cases, one of these cases has been provided below.

Case	J.N., G.P. vs. Superintendent, J.C.K.V, Dr. F. J.
Consumer Complaint No.	310/2000
Consumer Dispute Redressal Forum	Vadodara Additional
Medical Ailment	Cataract
Date of filing	25/07/2000
Date of disposal	28/12/2017
Duration of Justice	17 years 5 months
Compensation Amount	Rs. 141,200

Description of the Case:

The complaints were filed by the complainants individually through J.N.- A registered voluntary consumer organization of Vadodara.

The complainant no. 2 got her mother-in-law, aged 60 years, admitted in opponent hospital for operation of **cataract** in her left eye. The opponent registered the case and charged Rs. 250. She was operated on 1/6/2000 and discharged on the same day.

Post the operation, she was suffering from severe pain in left eye, therefore, she was brought to an opponent's hospital on 2/6/2000 for check-up but nobody gave proper response to them. The concerned doctor, after examining the patient gave shocking news that due to development

of infection pseudomonas on account of colossal negligence of opponent having used **unsterilized operation of appliances and fixing of the non-standard lens**, the operation was failed. In addition, it was also identified that the **staff were not qualified and trained, and the pus had been formed due to infection.**

It was also advised by the doctor that the left eye of complainant's mother-in-law was required to be extracted otherwise, the infection would spread in her right eye as well.

By this way, the opponent hospital has shown negligence in the cataract operation of the victim and the patient lost the eye vision and after all, the eye had to be extracted for the protection of spread of infection.

Similar case:

While providing the comments, the similar incident was mentioned by the advocate of complainants where *'One incident of negligence happened on 21/22/23-June, 2006 wherein 112 operations of Cataract, retina and glaucoma have been failed in the opponent's hospital. The government subsequently formed the expert committee and they inspected and observed the operation thereafter took the statement of the patients. They came to conclusion that all the operations were failed due to **negligence of treating doctor, unqualified nurse and staff, unsterilized operation appliances and lack of supervision.***

In the same year, another incident happened where the complainant lost both the eyes in his/her young age due to negligence of doctor'.

Consumer Forum's Observations:

The consumer forum observed that the **prima facie negligence case does not require expert evidence.** The principle of **Res Ipsa loquitur** is applicable. Hence, the opponents were liable for the operation.

The opponents were ordered to pay Rs. 144,000 with interest rate of 7% p.a. from the date of complaint till realization based on the Workmen's Compensation Act. The compensation order of Rs. 25000 towards mental torture, Rs. 4000 for miscellaneous expense, Rs. 5000 towards cost of litigations and Rs. 250 for hospital fees.

It is important to highlight that despite Res Ipsa Loquitur, it took more than 17 years for the victims to get justice.



(Illustration of a similar case where the Lokayukta teams find fungus on equipment and debris endangering life of the patients. - Times of India, 14/09/2022)

When injection needle pierce beyond: Consequence of using prohibited injection.

Case	N.C. vs. Dr. S. N. P.
Consumer Complaint No.	147/2016
Consumer Dispute Redressal Forum	Ahmedabad Rural
Medical Ailment	Swelling in Retina
Date of filing	31/05/2017
Date of disposal	15/11/2018
Duration of Justice	1 year 6 months
Compensation Amount	Rs. 105,000

Description of the Case:

The complainant was finding difficulties in reading the small letters and hence on 15/12/2015, he contacted Dr. S.P., the opponent doctor. Upon investigation, doctor told that he was having swelling in the right eye for which he advised that the complainant need to take injection of Rs. 10,000. On 18/12/2015, the complainant took the injection.

The complainant felt better after the injection and eye drops. Despite the improvement, the doctor said that he needs to take another injection of Rs. 10,300. While taking the second injection on 21/1/2016, at that point, both the opponent and anaesthetist were involved in conversation. When the injection was administered under this condition, there was acute pain in the complainant's eyes. The eyes became watery and he experienced vision loss.

Understanding Medical Negligence:

The complainant called the opponent on 22/1/2016 to explain this matter. The opponent asked to visit in the evening. When the opponent checked the patient through machine, he mentioned that **while providing the injection in the right eye, due to deep insertion of needle, there was bleeding and hence, the patient was unable to see properly due to Vietris Haemorrhage**. This condition occurs due to puncture of the blood vessels. He mentioned that with the eye drops, he will be able to see properly in one week. Despite taking the eye drops for almost a week, there was no improvement.

On 3/2/2016, he once again visited the doctor, he complaint that earlier he was able to see through both the eyes, but now the other eye is also affected. He was **unable to see anything from the right eye and having blurred vision in the left eye**.

Reaction of Practitioner:

In the reply the doctor mentioned that **there are many people who live and survive with only one eye. There has been mistake, so what!**

He suggested to continue taking the eye drops and after some days asked to visit once again.

Coherence with the Macro level Medical Negligence:

The complainant mentioned that during the time of treatment of the complainant, there were news of many patients becoming blind due to taking 'Avastin' injection in the N. Hospital. The injection that was provided to the complainant in the right eye was also 'Avastin', the usage of which was prohibited by the government. Out of fear, the complainant consulted another 4-5 doctors who told that since, he was provided with 'Avastin' injection, which is prohibited, there were impact in the other eyes too.

The complainant showed the opponent doctor on multiple occasions and on 24/2/2016, he performed laser treatment for Rs. 5000. Still there was no improvement in the eyes or vision.

When the complainant complained about the loss of vision, despite of spending almost Rs. 50,000 due to usage of prohibited 'Avastin' Injection, the opponent replied that if the complainant wishes, he can consult other doctors and also register case against the doctor. The conversation was recorded by the Complainant.

Due to negligence of first using the Avastin injection and secondly, deep insertion of needle in the eye, the complainant's vision was affected.

Consumer Forum's Observations:

The consumer forum concluded that there was medical negligence in the case by the doctor and ordered to pay Rs. 100,000 at 8% rate of interest to the complainant from the date of complaint till the realization. In addition, Rs. 5000 was ordered to be compensated for cost of proceedings.



(Illustration of the drug manufacturing by fictitious company highlighted in times of India dated 06/03/2023- putting large number of patients at risk)

Researcher's Comments:

In all the cases disposed of regarding eye related ailments, there was negligence in the surgery resulting to sever vision loss for the victims. The deficiency in services were also exhibited in the cataract operations such as the treatment by untrained staff, usage of unsterilized

equipment, and substandard fixtures. It can be interpreted that the voluntary consumer organizations played an important role in supporting victims by facilitating case filing and awareness generation about consumer protection mechanisms. The judgements in favor of victims were supported by presenting similar cases in other hospitals, alongside the important treatment and payment related documents serving as evidence.

In addition, the negligence involved in providing injections, indicates lack of reasonable skills among the medical practitioner, leaving huge impact on the patients' lives, especially regarding vision loss. According to center for disease control and prevention, the loss of vision increases the risk of fall and the quality of life. In addition, it also impacts the mental health as the person with vision loss often feel loneliness, social isolation, feelings of anxiety, worry, and fear. Apart from these, it also creates dependence on the family members and thereby increases social impacts through the ailment.

In the cases as above where at a time, 17 patients suffered due to negligence by the medical practitioners, social workers can advocate for protection of rights of patients as consumers, holding the hospital administration and treating medical professionals responsible. Social Action as a method can be utilized in this regard. In addition, sensitization to the medical practitioners is utmost important about their prime responsibility towards patient. The preventive measures to mitigate medical malpractice is of utmost importance.

2. Related to Orthopedic Ailment:

Unfair Trade Practices: Charging for operation that was not even conducted!

Case	M. D. vs. Dr. S. S.
Consumer Complaint No.	459/2009
Consumer Dispute Redressal Forum	Vadodara Additional
Medical Ailment	Hairline crack in leg due to accident
Date of filing	15/6/2009
Date of disposal	26/6/2015
Duration of Justice	6 years
Compensation Amount	Rs. 4500

Description of the case:

The complainant earned livelihood by selling DVDs in Vadodara. On 21/3/2009, while going out with the family, the complainant's son fell down from the bike and had small injuries on hands and legs. He was taken to N. Orthopedic Hospital (opponent doctor's hospital). The doctor after advising X-ray told that in the leg, there is a hairline crack and with the band aid, he will be cured.

The doctor had mentioned the tentative expense to be 2000-3000 rs. But the complainant had requested to provide concession.

Overcharging from what was committed to the complainant:

The complainant's son was treated in the hospital for 2 days and was charged Rs. 7825 which were beyond complainant's resources at that time.

The opponent doctor mentioned that his son will only be discharged when they pay the hospital bill. Hence, he borrowed the money and paid for the same. The hospital had told to collect the bill the next day, wherein the expenses such as anesthesia charges (Rs. 500/-), Operation charges (Rs. 3500/-), medicine charges (Rs. 700/-), visit charges (Rs. 400/-) etc. was mentioned. It was noteworthy that the **operation was not performed on the patient and extra visits were also not conducted to see him. Still the bill contained these details.** Hence, it was alleged that the doctor had showcased '**deficiency in service**' and '**unfair trade practices**'.

Consumer Forum's Observations:

The forum agreed to the above chronological events and observed that the complainant had only produced case memo of 15/3/2009, because the hospital did not provide any other case papers or the **written documents**. The documents provided by the opponent had unclear details which were corrected manually.

It was observed by the forum that medical profession is the noble profession. Usually, the patient is totally unaware of the medical ailment and takes treatment with the trust. Still if the doctor does unfair trade practices, is not appropriate. Most importantly, when the patient and the family is coming from the poor background, the clarity of the treatment, cost involved etc. shall be made in the beginning of the treatment itself so that later, the patient or their family is not put into any trouble.

The consumer forum ordered to pay compensation of Rs. 3500 which was charged for the operation, from 15/3/2009 till realization at 9% interest, plus, Rs. 1000 for mental agony and legal proceedings.

Sacred Trust Broken: Impact on religious faith due to operating different Spinal disc

Case	J.N., I.D. vs. Dr. K. P., T.N.I.A. Co.
Consumer Complaint No.	1089/2007
Consumer Dispute Redressal Forum	Vadodara Additional
Medical Ailment	Operation due to compression in L-4 and L-5 in spine.
Date of filing	18/12/2007
Date of disposal	20/10/2016
Duration of Justice	8 years 10 months
Compensation Amount	Rs. 1,66,916

Description of the Case:

In this case, the original complainant is complainant no. 2 who had filed the complaint through J. N.- a voluntary consumer organization. The complaint/patient had pain at his left leg since one and half year therefore, he visited at M. Medical Centre on 26/6/2007 and his case was referred to opponent because the opponent is visiting surgeon of said hospital.

The opponent doctor 1 prescribed medicines but there was no improvement leading to the need of operation. Being a senior citizen and retired government servant and having average economic condition, therefore, requested to be operated at M. Centre where the charges would be less. However, the opponent doctor 1 informed that since the hospital does not have sufficient equipment and instrument for satisfactory operations. It was better to get operated at private hospital.

Based on doctor's advice, the patient underwent X-ray and MRI at Medi square diagnostics whose report showed Annular herniation of L-4 and L-5 intervertebral disc. After inspecting the reports, the doctor stated that there is a compression between L-4 & L-5 of spine which requires to be operated.

The complainant was admitted on 9/7/2007 and opponent no. 1 operated the patient on 10/7/2007. The patient was discharged on 17/07/2007, but there was no relief from the pain and therefore, was admitted once again for several days.

The doctor advised him to take rest and prescribed the medicines. The complainant incurred total medical expenditure at opponent hospital for Rs. 37,190.

Since there was no relief in the pain, the patient consulted orthopedic surgeon Dr. K. B. on 2/8/2007 and Dr. R. P. on 14/8/2007 and Dr. M. M. Neurosurgeon of V. Hospital on 11/8/2007.

Identification of Medical Negligence:

Dr. M.M. obtained MRI report from PDRC Centre. It was identified by Dr. M. that **instead of conducting operation in L-4 and L-5 Disc, it was conducted for L-3 and L-4 disc** and hence, **another operation was required.** Dr. A.M. from A. M. Hospital gave advice for resurgery.

He once again contacted opponent doctor 1 and advised him to get opinion of senior doctors and also gave the note. The complainant was admitted in V. hospital on 17/8/2007 and was operated for L-4 and L-5 with repairing in L-3 and L-4 disc by Dr. A. M. at V. hospital. The discharge summary produced showed that the operation performed L4-5 Laminectomy with L4-5 discectomy with left L5 & L4 Foraminotomy with L3-L4-L5 Pedicle screw fixation. The complainant incurred total expense of Rs. 69,726.

Since this negligence by the doctor caused patient huge financial costs and physical pain, he complained in the Consumer Forum. It shall also be noted that due to this ailment, being a religious person, he was not able to offer 'Namaz' (religious prayers).

Consumer Forum's Observations:

Considering the evidence, arguments and chronology of events, the consumer forum observed that there was a negligence on part of the opponent doctor 1 and he is duty bound to take care of the patients at the time of operation and due to negligence, patient suffers mental and physical torture and incurred the financial cost. Therefore, the doctor was liable for providing compensation.

The complaint was partially allowed by the consumer forum and the opponents were ordered to pay the medical expense of Rs. 106,916 with 9% interest from date of filing the complaint dated 18/12/2007 till realization. In addition, the opponents shall also pay Rs. 50,000 for mental agony and Rs. 10,000 for legal expenses.

Compounding Errors: Omission in first operation leading to necessity of a second

Case	P. S. vs. Dr. Y. B.
Consumer Complaint No.	172/2015
Consumer Dispute Redressal Forum	Vadodara Additional
Medical Ailment	Operation of L-4, L-5 disc
Date of filing	13/02/2015
Date of disposal	13/03/2017
Duration of Justice	2 years 1 month
Compensation Amount	Rs. 601,000

Description of the Case:

The complainant (patient) was a practicing lawyer at Ankleshwar and Bharuch Court and the opponent doctor was running a hospital named A. Neuro surgical at Vadodara and a visiting doctor at G. Hospital, Bharuch.

The patient and their family Dr. A K P., MS came to G. Hospital on 5/11/2011 for check up with a complaint of pain on the waist to the opponent doctor. Based on checkup, it was advised to obtain MRI report of lumber spine. Reviewing the findings, the opponent advised him to undergo operation of microdiscectomy for L4-L5 disc. The complainant visited the opponent doctor, but he has not shown the willingness and readiness for operation. This was suggested as the only remedy after which he will recover. The patient was given estimated cost of Rs. 120,000.

The surgery was performed after a long time on 28/6/2012, and after 6 days on 3/7/2012, the patient got discharged with some advice to visit physiotherapy clinic for exercise. The opponent doctor took the charges of Rs. 90,000 for operation, Rs. 30,000 for medicine expenses, hence, a total of Rs. 120,000.

Post operative complications:

After 2 months from the operation, the complainant was suffering from tremors and heaviness in the leg. He wasn't being able to stand for even 10-15 minutes and hence, went to the G. Hospital once again for the check-up and with a complain of paresthesia and heaviness in leg.

Once again, the doctor had advised for MRI report which was carried out on 14/8/2012. After examining the patient and the MRI report, the doctor said that there was no matter of concern and that the patient would recover. When there was no improvement in the condition, the complainant once again went to the opponent doctor for checkup.

The patient once again got the MRI on 27/2/2013 and after examining the MRI, the opponent said that there was **pressure on the vein below disc L4-5** and therefore, 2nd operation is necessary to solve the problem.

Post that, on 28/2/2013, the complainant approached Dr. A. D.- Neurosurgeon from Surat for his opinion. And later on 18/3/2013, he approached Dr. B. D., Orthopedic Surgeon of S. Spine hospital. Both the doctors stated that the **problem could have been solved in the first operation itself**. The pressure on the nerve route could be removed at the first operation. At that moment, the only remedy was to perform **2nd operation**.

According to the complainant, after the subsequent operation, the problem could not be completely solved. The opponent doctor in his reply to this argument that there were chances of listhesis and infection in the disc space and hence the pressure on nerve route was not removed in first operation. He also contended that the second operation is necessary. The same was ruled out through the certificate provided by Dr. A.D. and Dr. B. D.

Consumer Forum's observations:

The consumer forum observed the evidence, argument, and opinions of the doctors, it was concluded that there was a negligence by the opponent doctor in performing the surgery due to which the patient sustained the ailment and now the second surgery was necessary. The opponent doctor was ordered to pay Rs. 600,000 towards compensation for operation charges, medicines, miscellaneous exp. With rate of interest of 9% p.a. from 4/6/2013 till realization. In addition, compensation of Rs. 1000 for the cost of litigation was also ordered.

Surgery of Elderly Patients: Negligence in adopting appropriate operative procedure

Case	J.D. vs. Dr. S. S., N.I.C.
Consumer Complaint No.	66/2004
Consumer Dispute Redressal Forum	Vadodara
Medical Ailment	Hip bone surgery
Date of filing	23/01/2004
Date of disposal	24/09/2018
Duration of Justice	14 years 8 months
Compensation Amount	Rs. 80,900

Description of the Case:

The complainant was a senior citizen of 65 years. On 2/10/2002, while doing household chores, she fell down and the family took her to the opponent's hospital. The opponent was the orthopedic surgeon. After undergoing X-ray, it was found that there was a **crack in the hip bone**. She was advised for the surgery after 2-3 days and informed that her Blood pressure was high.

On 5/10/2002, the opponent doctor performed the surgery and took the post-operative care. After 10-12 days, she was discharged but still was in pain where the operation was performed. After 1.5 months, when the patient once again went for the checkup, she was assured that she would be alright. She was advised to start walking with the walker after completion of 2 months of the operation.

When the pain persisted, she once again went for the X-ray with other doctor. It was identified that in the first operation, 1 plate and 4 screws were fixed and due to negligence in first operation, the pain persisted. After that, the complainant was admitted in the hospital of Dr. K.B. wherein once again she was diagnosed and operated.

Opinion of Expert Doctor:

In the cases related to medical negligence at consumer forum, the opinion of expert doctor on the affidavit is very important. From complainant's side, the expert Dr. P. N. T. provided his comments which were as follows:

- The operative procedure taken by the opponent was not correct because fixing of fractured bone by nail and plating in old patient of 65 year is avoided due to demineralization of bones. Total hip joint replacement is advised.
- The opponent has mentioned uncontrolled hypertension with heart problems in the discharge card whereas there was no advice to continue the heart medicines.
- Opponent doctor prescribed medicine 'Donolex' (which is not given in hypertension and heart disease patient) without going into the detail about the drug.
- From 14-10-02 to 07 -04-03, opponent doctor took x ray but could not diagnose that bones are not united after operation which was clearly written in the x ray report dated 31-05-03.
- Second treating doctor provided the diagnosis as a complication of first operation.

In the older patients, replacement arthroplasty is preferred in older patients. However, with the complainant, cup arthroplasty was preferred.

In reply to this, the opponent doctor neither provided as evidence, nor provided any argument for proving that his opinion was incorrect.

Consumer Forum's Observations:

Considering the above details, the consumer forum concluded that medical negligence was existing in the case and the opponents were ordered to compensate Rs. 73,900 at 8% rate of interest p.a. from date of complaint till realization. In addition, the opponents were ordered to pay Rs. 5000 for cost of legal proceedings and Rs. 2000 for mental agony.

Omission of administering Tetanus Injection resulting in Permanent Impairment

Case	J.N., K.P. vs. Dr. A. S., Y.V.A.M., N.I.A.C., U.I.I.C.
Consumer Complaint No.	1148/2008
Consumer Dispute Redressal Forum	Vadodara Additional
Medical Ailment	Injury in Left Finger
Date of filing	31/12/2008
Date of disposal	16/03/2010
Duration of Justice	10 years 3 months
Compensation Amount	Rs. 36,836

Description of the Case:

The complaint was filed by the original complainant Mr. K. P. through J.N.- a voluntary consumer organization.

On 24/02/2008 at 8.30 a.m. the complainant (patient) had sustained injury due to impact of the fall of heavy stone of 100 kg, resulting into crushing of injury on first finger of left hand. In emergency due to bleeding, the patient was brought to Y.V.A.M. the Opponent No.2 hospital and Dr. A.S. the opponent No.1 provided emergency treatment.

The patient paid the case fees of Rs. 50. Before the treatment and examination by opponent doctor 1, X-ray was taken. The opp. Dr. informed that operation was required to be performed immediately and wiring would be necessary. The surgery was performed, and the patient was informed that a vein was injured and if did not work properly then the top portion of the finger would be removed. The patient was discharged with advice to visit after 2 days. During the visit, the doctor said that the veins are working properly.

The doctor prescribed the medicines after examination on 26/2/2008 and instructed to come for dressing on 29/2/2008.

Identification of Medical Negligence due to post-operative complications:

After 12 days of the surgery, the complainant had complaints such as not being able to walk properly, inability to eat as the mouth was affected, difficulties in taking medicines and stiffness of the muscle. When the patient informed the same to the opponent doctor, he changed the medications, but there was still no relief.

The complainant was taken to hospital of Dr. J.S. on 9/3/2008. The next day, sonography was conducted by Dr. B. P., along with the blood and urine tests by Dr. A.S. Both the doctors opined that the complainant was suffering from **stone** and started treatment accordingly.

On 11/03/2008, the complainant visited Dr. H.S., ENT specialist who informed that these were the symptoms of **Cancer** and CT Scan was advised. However, it was not identified in the report.

While the condition of complainant was deteriorating, he consulted Dr. A.S. The doctor diagnosed that the complainant was affected by “**Tetanus with Truncal and Laryngeal movement with left lower limb foal**”. When the patient was admitted to his hospital, he was affected 75-90% due to tetanus with no movement, problems in breathing and oxygen. He was shifted to Deep ICU on 17/3/2008.

The complainant consulted Dr. S.M. from M. Surgical Hospital for expert opinion who opined that the condition happened because, during the course of operation, the opponent doctor **omitted to provide Tetanus and Tetglob injection**. The patient suffered physical, mental trauma and financial loss.

Consumer Forum’s Observations:

In the return reply by the opponent doctor, he mentioned to have provided the Tetanus injection, but the reference of injection was not found on record. The expert opinion also contained that there was negligence on part of the opponent doctor. Considering the facts and circumstances, the consumer forum ordered to the opponents to pay Rs. 1837 with 9% interest from 24/2/2008 till realization. They were also ordered to pay compensation of Rs. 30,000 + Rs. 5000 for the cost of litigation.

Imperfect Implants: Erroneous Choice and Deficiency in Services

Case	Legal Heirs of J.R. vs. Dr. H.V.
Consumer Complaint No.	554/2015
Consumer Dispute Redressal Forum	Ahmedabad City
Medical Ailment	Knee Replacement, Injury after fall
Date of filing	29/07/2015
Date of disposal	14/08/2019
Duration of Justice	4 years 1 months
Compensation Amount	Rs. 262,907

Description of the Case:

The complainant was 64-year-old and underwent knee replacement before 6 years. On 11/03/2015, she fell while doing household chores and suffered injuries. She was feeling pain on her left knee without bleeding. Considering the injuries as non-serious, her family members provided her home remedies.

Since the pain persisted for 2-3 days, the complainant consulted Dr. B.P. and after advising and investigating her x-rays, he suggested to undergo a surgery with **implanting a plate**. Dr. P. referred the patient to opponent doctor who was consulted on 16/03/2015.

In first consultation, the opponent advised for the **rode to be implanted** upon the side of fracture instead of plate. It was further advised that the complainant needs to be admitted in the hospital for the traction treatment to reduce her pain.

The complainant was admitted to the hospital at 16/03/2015 at 5:00 p.m. for traction. Instead of reduction in pain, it further increased. The patient was operated by the opponent doctor on 19/03/2015 and the rode was implanted with two screws. The opponent doctor assured that the pain will reduce gradually.

The complainant was discharged from the hospital on 23/03/2015, but her pain did not subside. The opponent doctor, staff and the physiotherapist told her to keep patience. Despite continuous physiotherapy even at home, the pain persisted.

Upon discussion between physiotherapist and opponent doctor, the doctor advised the patient to consult him with the X-ray report. While visiting on 7/4/2015, upon investigating X-ray,

complainant was informed that she had once again developed fracture, but with 15 days bandage, it will be healed. Else, full big rode would be implanted. If there still would not be any cure, whole joint would be replaced. He could not explain the reason for another fracture.

Upon no relief, the patient consulted Dr. P. S. who opined that the **previous operation was not conducted properly. Due to loosening of implants, lack of proper screwing**, the thigh bone of the patient was once again fractured. Since, the thigh bone was fractured, the bone grafting was required and then the plates were to be fitted. There was no other cure than to go for second surgery.

On 8/4/2015, the complainant was admitted to S. hospital and on 10/4/2015, Dr. P.S. operated her by **fitting plate with 22 screws after applying bone grafting and removal of earlier fitted rode**. The complainant was relieved from pain after second surgery.

While the proceedings were on-going, the complainant also passed away due to ageing process and her legal heirs represented her side.

Consumer Forum's Observation:

The consumer forum concluded that the deceased complainant had to undergo second surgery only on account of loosening of implant and failure in the first surgery by the opponent who showcased **negligence** on his part. Also, the fact that her pain persisted right from falling till performing second surgery showed the **lapses in the first surgery**. The consumer forum observed that, the medical negligence in the first surgery showed **gross negligence, lack of care, deficiency in services and unfair trade practices towards the deceased complainant and her legal heirs**.

The consumer forum ordered the opponent to pay Rs. 2,54,907 as a compensation from the date of complaint i.e. 29/07/2015 at 8% rate of interest per annum. The forum also directed to pay Rs. 5000 towards mental agony and harassment and Rs. 3000 towards cost of complaint.

Discomfort at Every Step: The Misfit artificial leg

Case	M.P. vs. Dr. J. Z.
Consumer Complaint No.	920/2015
Consumer Dispute Redressal Forum	Vadodara City
Medical Ailment	Artificial leg due to accident
Date of filing	30/11/2015
Date of disposal	15/07/2019
Duration of Justice	3 years 8 months
Compensation Amount	Rs. 3000

Description of the Case:

The complainant was travelling through Tempo. Due to accident, his left leg was fractured. After even a long treatment, there was no cure, eventually, his leg had to be amputated.

The opponent was a specialist of making artificial limbs. The complainant decided to visit opponent for the artificial leg for which he was informed the charges to be Rs. 281,000.

The complainant paid Rs. 5000 in cash and Rs. 135,000 via cheque. On 20/01/2015, the opponent telephonically informed that the leg was prepared. The complainant on 04/02/2015, came from Modasa to Vadodara wherein the opponent explained about how to wear/remove/lock the artificial leg. The complainant paid the remaining amount.

When the complainant put the artificial leg in practice, he was facing difficulty as there was misalignment in the toes and after little walk, he was feeling back pain.

When the complainant contacted the opponent twice- once at Vadodara and one through Ahmedabad branch, he could not solve the problem of the complainant.

Consumer Forum's Observations:

The consumer forum ordered the opponent to repair the artificial leg of the complainant so that he could move around without any difficulty. For this purpose, he should not charge any amount from the complainant. In addition, the consumer forum ordered opponent to pay Rs. 2000 for mental agony and Rs. 1000 for cost of proceedings.

Complications of Unsterilized Equipment in Leg Surgery

Case	A.P., H.P. vs. S. Hospital
Consumer Complaint No.	150/2014
Consumer Dispute Redressal Forum	Ahmedabad Rural
Medical Ailment	Knee injury due to accident
Date of filing	15/07/2014
Date of disposal	27/05/2022
Duration of Justice	7 years 10 months
Compensation Amount	Rs. 53000

Description of the Case:

The complainant 1's son H. (Complainant 2, referred as 'Patient') met with an accident on 25/01/2014 at 1:30 p.m. Upon investigation in the S. Hospital (Opponent), it was identified that his right knee was broken and needed emergency operation. At 6:30 p.m., the patient was operated. On 28/01/2014, the patient was discharged with the prescription of medicine.

Even after operation, **the pain in the knee persisted**. On 18/02/2014, the patient had fever and based on family physician's advice, he underwent blood and other tests through which CRP level was identified to be 15.40. The family doctor prescribed the medicines. The fever used to reduce till the time there was an effect of medicine. After that, the temperature once again used to increase.

Post that, the patient was taken to the opponent hospital wherein the investigations such as blood test, X-ray and sonography, it was found out that there was **fluid accumulation** in the operated area. The doctor informed that it was due to the operation, but there was nothing to worry.

Due to continuous fever, the patient was taken to the specialist Dr. A.P. who informed the complainant that due to enhanced infection in the operated area, he was having fever. It was also identified through tests that, after the operation, the swelling in the operated area increased and so was pain.

The complainant called Dr. J.S. for the home visit. When he checked the report, the CPR was too high, due to which the patient was having fever and pain. Dr. S. recommended **second operation** to stop the further spread of infection.

The patient was once again hospitalised, and the fluid accumulated at the operated area was sent for the cultural test. Since, the report of cultural test took time, he once again visited the opponent hospital. The hospital staff informed that whether the second operation would be conducted or not, that decision would be taken by Dr. V.S. Even when Dr. S. was informed about Dr. S.'s advice of the second operation, he did not give an importance to it.

On 27/02/2014, the patient was admitted to S.S. Orthopaedic hospital for further treatment and at 11:00 p.m., the patient was operated. During the surgery, approximately 50 ml of fluid was removed. When the culture report of the fluid was obtained, the primary report showed negative results, but the final report investigated the prevalence of bacterial infection.

When the expert doctor's opinion was obtained in this regard, it was informed that **due to usage of unsterilized medical equipment in the previous operation, the patient had developed this infection.**

Consumer Forum's Observation:

For the compensation to be claimed in the consumer forum, the complainant has to submit the evidence of payment, which in this case the complainant was unable to furnish as they had availed the benefit of cashless facility through insurance company. Hence the compensation for the amount paid for the treatment and surgery cannot be made. While the consumer forum agreed on the negligence, it ordered the opponent doctor to pay the compensation of Rs. 50,000 to the patient at 8% rate of interest per annum for mental agony and Rs. 3000 for the cost of legal proceedings.

Researcher's Comments:

It is important for the social workers to address the incidences of medical negligence in the orthopaedic ailments. From the above cases, it can be inferred that negligence occurred such as mistake while performing surgeries, unfair trade practices, wrong treatment/operations, usage of non-standard fixtures. Due to the negligence, the patient often faces many physical and emotional challenges undermining patients' trust and well-being.

The impact of the orthopaedic ailments is multifaceted. Physically, the patient suffers from prolonged pain, potential complications that put them into vulnerable conditions and limited mobility. The financial burdens from the damage control and corrective treatment, and

continuous care impacts not only the patient but the entire family. It also leads to patient feeling anxiety, distress, and loss of faith in the medical system.

The goal of social worker here is to ensure the standard of care is received by the patients. They can empower the patients in providing awareness of their rights, encourage and refer them to seek second opinions before undergoing surgical procedures, and important documents to be preserved. The social workers can make meaning contribution by collaborating with the healthcare professionals to implement the safeguards against medical negligence and malpractices for example cross-checking the processes and protocols before and during the surgery to mitigate the risks associated with the surgery. In addition, one of the above cases involved the unfair trade practices such as charging the patients for the surgery that was never performed. In such cases, the social workers can advocate to the medical regulatory bodies for the strict regulation of the medical practices to curb the unethical practices that are prevalent in the health sector.

3. Related to Gynecological Ailments:

Preventable Mishap: The consequences of Neglecting Pre-Operative Care

Case	Y.R. vs. Dr. J.S., Dr. C.B., Dr. S. P.
Consumer Complaint No.	628/2015
Consumer Dispute Redressal Forum	Ahmedabad Additional
Medical Ailment	Uterus removal operation due to cyst over left ovary
Date of filing	29/7/2015
Date of disposal	31/1/2017
Duration of Justice	1.5 years
Compensation Amount	Rs. 7,73,000

Description of the Case:

The complainant's wife was having stomachache since last 2 months for which she underwent the X-ray at the clinic of Opponent No. 1 on 13/8/2014, where it was identified that she had gynecological problem. Based on X-ray reports, she was advised to undergo sonography on 20/8/2014 where it was identified that she had 'cyst over the left ovary'.

When opponent 1 asked the complainant if they had Mediclaim, the complainant agreed and based on that, the doctor advised for operation for removal of uterus.

Based on the contemplation with family, the complainant's wife agreed for the operation. She was admitted in the hospital on 25/8/2014. On 26/8/2014, she was asked to come empty stomach for 'Laparoscopy' operation and was admitted in the delux room.

While filling out the consent form, the complainant sought the explanation about the surgical procedure and details. The staff replied not to worry and when the doctor calls, she can be taken for the operation.

Pre-operative Processes:

Before the operation, the opponent doctor 1 did not advise on any tests or physical examination. Based on an enquiry by the family, the patient was taken for laparoscopy at 3:00 p.m. After the operation, she was shifted to the room at 5:00 p.m.

Post Operation Complications:

After completion of the operation, the patient complained of chest pain and restlessness. Hence, when the opponent doctor 2 who is Anesthetist, was shared about these symptoms, he shared that it is natural after the operation. However, the patient's oxygen was dropping. She was shifted to ICU. She also vomited while she was in ICU. But after half an hour of ICU treatment, she was shifted to the room once again.

The doctor (opponent dr. 1) did not visit the patient after the operation despite the complaints of chest pain and restlessness till late in the night that day. Since the complaints persisted, the staff nurse asked the complainant to bring an injection from the hospital and administered the same.

When the injection was provided to the patient, the white foam and blood started coming out from her nose and mouth. The complainant shouted but none of the doctors came to treat her. A general ward boy came and advised to take the patient to the ICU. After that when opponent doctor 3 was contacted, he reached within 20 minutes i.e. 12:15 a.m. Despite of enquiring many times about the condition of her wife, the complainant was not answered for his queries.

Consequences of deficiency in care:

The opponent doctor 1 neither called any other doctor who can handle the emergency case or consulted any specialist even when the case worsened. Due to appropriate timely care, at 2:30 a.m., the patient **passed away**. The reason of death was '**sudden cardiorespiratory arrest due to pulmonary emboli's aspiration**'. The doctor provided the death certificate.

After completion of rituals, the complainant sought the case papers and documentation from the opponent no. 1, but he avoided meeting and did not provide any record. The complainant in writing asked for the papers on 21/10/2014, but then too records were not provided.

When the complainant sent the doctor legal notice, at that point, he provided case papers. But many discrepancies were identified, and it appeared as if the papers were prepared after the legal notice. For e.g.

- (1) the clinical history paper mentioned the preparation routine normal. However, in actual, no prior tests were suggested such as blood tests, urine tests.
- (2) The SPO2 (oxygen level) was 98% at the time of admission in ICU. Normally, a patient who has 98% oxygen does not require ICU support.

In addition, when the case was filed in the Consumer Dispute Redressal Forum, the opponent doctor 1 did not reply to the notice or was present for the proceedings.

Consumer Forum's Observations:

The opponent doctor 1 did not advise on the pre-operative tests which are important to identify in case the patient has any heart or blood pressure related ailment or any other condition that can generate complications during and after the operation. In addition, despite the deteriorating condition, the specialists or any other doctor was not consulted and hence, post operative processes were also not followed.

In addition, there are many discrepancies in the medical records as provided above.

From the chronology of events and details as per the records, no preventive steps were taken by the opponent doctors. Even when the patient's condition was much deteriorated, except for one injection, no efforts were made to treat the patient. Only one ECG was done to identify if the patient is alive or not and was declared dead. No emergency measures were taken except for giving CPR.

The death report also contained the word 'probable cause of death' which showed the lack of clarity of the opponent doctor. It was concluded by the forum that there was medical negligence in handling the case of patient. Also, the complainant was charged heavily for the treatment, yet the healthy 37-year-old patient passed away due to negligence of doctors.

It was confirmed that there was '**deficiency in service**' and '**unfair trade practices**' by the opponent doctors. The opponent doctors were neither provided their written reply to the complaint, nor were present in front of the consumer forum.

Since, the patient was earning a salary of Rs. 8200 p.m., her annual salary was Rs. 49,200. Considering, she could work for another 15 years, she could have earned Rs. 7,38,000 to support her family.

The medical negligence by the opponent doctors were proven and they were ordered to pay a compensation of Rs. 7,38,000 at 9% interest from 29/1/2015 till realization. In addition, they

were ordered to pay Rs. 25000 for mental agony and Rs. 10,000 for the cost of legal proceedings.

Hope's Mirage: Unfair Trade practices in Fertility Treatment

‘કાં તો યુગલના હાથમાં આવશે જીવંત બાળક અથવા તો યુગલના હાથમાં આવશે તમામ નાણાં પાછા’

Case	L.V., D.V. vs. Dr. H.B., Dr. F. B., B. Fertility Institute
Consumer Complaint No.	825/2013
Consumer Dispute Redressal Forum	Ahmedabad City
Medical Ailment	Fertility Treatment
Date of filing	30/9/2013
Date of disposal	12/5/2016
Duration of Justice	2 years 8 months
Compensation Amount	Rs. 390,000

Description of the case:

The complainants after certain years of marriage were not able to conceive. Hence, the opponent no. 3- B.F.I. which was known for fertility treatment was contacted by the complainants in the year 2010. Considering the reputation, scientific technology, and the fact that more than 1400 patients were successfully conceive after receiving treatment from the institute since 1990, the complainants got impressed and developed the trust that positive results would be achieved through the treatment.

Generating Hope in the mind of Complainants:

Opponent no. 2 explained the line of treatment which was convincing for the complainants, and they were told that with this line of treatment, the complainant can get pregnant within 6-12 months. If she is not successful in conceiving, the institute will return the charges taken from them. Hence, the complainants based on this promise to getting the money back in case of unsuccessful treatment, agreed to undergo the same.

The doctors had first advised for the preliminary investigation and after that informed the complainants that they need to be present for the treatment every month at the time provided. The same was followed by them including the routine checkups without any negligence.

Since the complainant were illiterate, they could not understand the treatment, but since long time passed and the lady could not conceive, they enquired the reason for the same. It was told that human body is unpredictable, and it is not possible to obtain same results in every case.

During the entire procedure, many blood investigations were conducted, medicines were prescribed and for healthy reproduction, whatever tests and Hysteroscopy were necessary were conducted. For this the total expense of Rs. 375,000 had occurred. As the complainants were not satisfied with the results, they discontinued the treatment and demanded to give back their money.

In January 2013, the complainant did not meet the opponents and demanded their money back. While doing so, the opponents suggested adding more money and take further treatment. The complainant mentioned that they were not interested in further treatment and wanted their money back. This case was of **‘unfair trade practices**.

The complainants also provided the document of the Bavishi institute which mentioned,

‘કાં તો યુગલના હાથમાં આવશે જીવંત બાળક અથવા તો યુગલના હાથમાં આવશે તમામ નાણાં પાછા’ (Translation: **Either the couple will get the child, or the couple will get all the money back**)

Consumer Forum’s Observations:

The consumer forum observed that this case is **not of ‘Medical Negligence’**, but of **‘Unfair trade practices**. In the pamphlet mentioned above, it is clearly mentioned that either the couple will get a child or all the money back. From the facts, documents provided and proceedings, the opponent doctors were not able to prove that the complainants were negligent in receiving the treatment as they followed all the treatment and schedules for the visit for investigations. When the treatment was not successful, they demanded their money back. When the institute had committed that they will give the money back and when the complainant could not conceive, it was the duty of doctors to return the money. If the doctors fail to return the money, it can be considered as Unfair Trade Practices on their part.

It was concluded that there were unfair trade practices and the compensation of Rs. 375,000 shall be paid to the complainant from 30/9/2013 at 9% rate of interest till realization. In addition, Rs. 10,000 for mental agony and Rs. 5000 for cost of legal proceedings were also ordered.

Journey full of hurdles: Navigating intestinal perforation during operation

Case	I.R.R. vs. Dr. J.A.
Consumer Complaint No.	186/2014
Consumer Dispute Redressal Forum	Ahmedabad Rural
Medical Ailment	IVF treatment
Date of filing	12/09/2014
Date of disposal	30/03/2019
Duration of Justice	4 years 6 months
Compensation Amount	Rs. 7,25,000

Description of the Case:

The complainant was married on 16/5/1993 but did not have a child. She saw the advertisement for IVF treatment on the television by P. Fertility Institute. On 5/5/2012, they visited the institute wherein they were provided information of IVF.

The complainant told that earlier she had undergone the IVF treatment twice but was not successful. The opponent gave **100% guarantee of results of the IVF treatment**. He provided information about different packages of Rs. 70,000; Rs. 90,000 and Rs. 125,000. The complainant chose the package of Rs. 90,000.

The opponent doctor told her to visit between 11th to 15th days of her periods and on 5/5/2012, prescribed few medicines. She again visited on 12/5/2012 and was prescribed medicines.

On 25/5/2012, the doctor called complainant's husband and 4-5 tests of the couple were conducted. Total Rs. 90,000 was paid by the complainant in different installments on 14/7/2012, 16/7/2012 and 21/7/2012. The IVF treatment started for the complainant on 16/7/2012 wherein she was provided a room for 6-7 hours and was discharged on 7 p.m.

On 31/7/2012, complainant's husband underwent the tests, and he was told that the reports would come after 1 week.

The doctor called the complainant and informed that the treatment was successful, and she had conceived. She was asked to visit the doctor in 7 days. On 7/8/2012, the couple visited the clinic where it was informed that the complainant is pregnant but, usually in sonography the fetus is not seen properly. She was once again prescribed the medicines.

After 15 days, once again the couple visited the doctor, wherein the doctor said that there was no pregnancy and if they want to undergo IVF once again, they can visit on 28/8/2012. During this period, they can continue medication.

On 28/8/2012, at 10:00 a.m., based on opponent doctor's advice, the complainant underwent sonography wherein he told complainant's wife, that the child is conceived in the left fallopian tube (uterine tube) and if it is broken, condition of his wife would be critical and hence, emergency life-saving operation was required. He said that she will be operated between 10:30-11:00 a.m. and won't require much time. The doctor only provided 10 minutes to the husband to decide. He took the consent of her husband and started the operation.

After two hours, the husband was called in the operation theatre and was informed that they would require specialists to operate. After 1.5-2 hours, a specialist visited, and the operation was performed. The operation was performed for **8 long hours instead of 1 hour**.

The complainant was not informed what was happening during the operation and sign on the blank consent form was taken along with the charges for the operation, medicine, and other materials.

When the complainant's husband asked the doctor about long time duration of operation, he did not provide any answer. Although complainant's health was not good, she was discharged within 3 days.

Post Operative complications:

After the discharge, she was under huge pain and hence, she was once again admitted to the hospital for 3 days. With some improvement, she was once again discharged, and she was brought back home at 8:30 p.m.

Once again, after coming back, there was terrible pain and swelling on the left side of the body and hence, she was admitted to hospital at 10:30 p.m. The opponent doctor advised for the

sonography and other reports. On 11/9/2012, Gynecologist from C. Hospital Dr. P.R.M. was called to the hospital and in his presence, the opponent doctor did 4-5 puncture in the left side of the body and removed the wastage. In this operation, it took 3-4 hours.

The complainant told that on 11/9/2012 and on 19/9/2012 when she was in pain, the opponent doctor informed her husband that some parts of fetus was still present and growing, hence, laparoscopy operation was needed. In presence of Dr. P. R.M., laparoscopy was performed on 20/9/2012 for 4-5 hours. After the operation, the patient's health was deteriorating, and hence other 2 doctors were called. It was informed that there was discharge from left side of the rib cage. Post this, the complainant's health further deteriorated. Whenever she took any food, the discharge used to aggravate.

Even when the patient was in critical condition, the opponent doctor went on international travel and kept other doctor on substitution. When the discharge was coming out of patient's mouth, the relatives called the doctor. But since he was in surgery, he could not come at that moment. After 4 hours, the doctor visited and prescribed the medicines.

Identification of the Medical Negligence:

The complainant's husband contacted Dr. P. B.P. and based on his advice; the complainant was taken to I. Diagnostic on 22/10/2012 wherein they reported for 11:00 a.m. to 6:00 p.m. The complainant and her husband were informed that there was a **hole in her intestine**. The couple contacted opponent doctor to enquire why this fact was hidden from them. He did not provide any answer. He called complainant's in-laws and informed to shift the complainant to C. hospital where Dr. P.R.M. would handle the case and the opponent doctor would visit regularly.

On 29/10/2012, the patient was transferred to C. hospital and on 9/11/2012, she underwent another operation. She was admitted to the c. hospital for 7 days and was discharged. Meanwhile the opponent doctor never came to visit her.

Considering these events, the complainant was under tremendous pain, mental agony because of the negligence by the opponent doctor.

Consumer Forum's Observations:

The consumer Forum Observed that there was a medical negligence by the opponent doctor and ordered the compensation of Rs. 500,000 from 12/9/2014 till realization at 8% interest rate

p.a. In addition, it was also ordered to pay Rs. 200,000 for the pain and mental agony and Rs. 25000 for the cost of legal proceedings.

Unforeseen Complications during Fibroid Surgery

Case	C.E.R.S., B.M. vs. Dr. P.S., S. Hospital, N.I.I.
Consumer Complaint No.	126/2013
Consumer Dispute Redressal Forum	Ahmedabad Rural
Medical Ailment	Surgery due to fibroids in vagina
Date of filing	10/07/2013
Date of disposal	27/3/2018
Duration of Justice	4 years 8 months
Compensation Amount	Rs. 393,567

Description of the Case:

The complainant (patient) filed the complaint due to medical negligence demanding compensation of Rs. 866,810.

The complainant with a complaint of vaginal bleeding visited the opponent doctor 1 Dr. P.S. for consultancy. Opponent doctor's wife was gynecologist who advised for sonography. The complainant underwent Pelvic Sonography at Dr. H.D.'s clinic wherein 69*69*54 mm size fibroid seen in the right lateral wall of uterus, 49*40*39 mm size fibroid seen in left anterior wall of the uterus two small 15 mm size intramural fibroid seen in posterior wall of uterus. This implies that two fibroids were seen in the uterus.

The report was shown to the opponent doctor 1 who suggested for operation. Prior to operation, the tests were conducted in Dr. J.R.'s S. Pathology laboratory who provided a certificate of fitness for the operation.

Since the complainant's husband was working in a bank who had tie up with the S. hospital and hence, it was decided to perform surgery in S. hospital for which the opponent doctor 1 did not have any problem. The doctor spoke to Dr. H. from S. hospital and decided to carry out the operation on 9/9/2010. Based on this, the complainant was admitted to Sterling.

The day of surgery and post-operative condition:

The patient was taken at 9:45 to the operating theatre and at 10:30 a.m. Dr. P. S. reached S. hospital. After the preparation and administering anesthesia, Dr. S. took 3-4 hours for the operation and at 2:45 p.m. informed that the operation was conducted successfully and after some time, the relatives would be able to meet the patient.

After some time, when the relatives met the patient, she was not in full consciousness and was telling them that she was feeling cold. After some time, she was shifted from ICU to room and provided Ice-cream and medicines. She also complained of stomach pain to the doctor. In reply, he said that the pain was due to the surgery. When the doctor came for the second round, she once again complained of pain. But she received the same reply that due to major surgery, the pain remains for some time.

The opponent doctor 1 visited the patient at 7:00 p.m. where she once again complained of the pain but was reassured. She was not able to sit properly.

On 12/9/2010, the complainant had fever and discomfort. When she called the opponent doctor 1, he advised for the blood test. At 12:00 p.m., the opponent doctor 1 came and provided an injection for pain and informed that she will be discharged the next day. She was still in pain and discomfort but still, was discharged from the hospital.

After reaching home at around 4:30 p.m., she had semi-liquid food, slept for 1 hour and tried walking for 2-3 minutes based on doctor's advice but couldn't be due to unbearable pain. She contacted Dr. J.R. who told her that it may be due to high BP. If the pain did not subside within 1 hour, she was advised to get admitted in sterling hospital.

Meanwhile, her body and fingers started becoming still. Considering the criticality of the case, opponent doctor 1 was called but he did not come and treat the patient. At 11:15 p.m., she was taken to S. Hospital in an unconscious state. Op. dr. 1 was called and the specialist present there mentioned that this condition of the patient was not because of the heart ailment. She was shifted to ICU.

Identifying Medical Negligence:

In the early morning, the patient was referred to Dr. H. who after checking the patient and referring to the reports said that the complainant had '**widespread infection inside the body and lifesaving surgery is needed**'. When the cause of the same was asked, it was told that it

may be because of the **leakage** within body which may have developed during the first operation. After the C.T. Scan report, it was identified that there was a **leakage in the rectum developed through the injury in the first operation.**

After this point, the treatment of the complainant was done by Dr. H. While passing the stool, she was having pain and bleeding. She was suggested to undergo a minor operation. She was admitted on 1/12/2010 at Dr. H.'s hospital who provided treatment of 'lateral and sphincterotomy' through which 3 ltr liquid was removed. She was discharged the next day.

The pain she was put in was due to the negligence of opponent doctor 1 and after the treatment by Dr. H., her condition was better.

Consumer Forum's Observations:

The consumer forums concluded that Opponent Dr. P.S. did not exercise standard of care as per the medical procedures and exhibited negligence. Opponent 2- S. hospital also did not provide an argument that the negligence was due to the opponent 1. Hence, both the opponents were responsible for the negligence together and separately.

The compensation order of Rs. 3,48,567 was provided for the second operation from 10/7/2013 till realization at 9% rate of interest. In addition, opponents were ordered to pay Rs. 35000 for mental agony, pain and suffering and Rs. 10,000 for cost of legal proceedings.

Did Social Welfare measures ensure good healthcare?

Case	H. G.S.M., K.H. vs. M.O. ESI hospital, Medical officer incharge of dispensary and others
Consumer Complaint No.	206/2014
Consumer Dispute Redressal Forum	Vadodara City
Medical Ailment	Menorrhagea
Date of filing	12/03/2014
Date of disposal	01/07/2019
Duration of Justice	4 years 3 months
Compensation Amount	Rs. 17,500

Description of the Case:

Complainant no. 2 (original complainant) submitted her complaint through H.G.S.M., a voluntary consumer trust. The complainant's son works in a private company, who availed the services of ESIH i.e. the opponent hospital.

The patient was admitted at the opponent hospital in March 2011 from 28/3/2011 and 4/4/2011 wherein she was treated for Menorrhagea. She continued visiting the hospital and undergoing treatment till 15/06/2012. Since she did not receive satisfactory treatment, she was admitted to the hospital of Dr. S.M. in June 2012. She was admitted to the hospital from 20/06/2012 to 26/06/2012 and operated on in abdominal area. She spent Rs.15,000 for the same.

Consumer Forum's Observations:

The consumer forum observed that the patient had undergone the treatment in opponent's hospital from 28/3/2011 to 15/06/2012, but there was no improvement in the patient's health. During 20/06/2012 to 26/06/2012, she took treatment at the private hospital. At that time, it was found that the opponent doctor did not provide appropriate treatment and hence, there was a need for surgery. Subsequently, the consumer forum ordered the opponent doctor to pay compensation of Rs. 15,000 at an 8% rate of interest p.a. from the date of complaint till realization. The opponent was also ordered to pay Rs. 1500 for cost of proceedings and Rs. 1000 for mental agony.

Researcher's Comments:

The impact of medical negligence on women is beyond the individual suffering, affecting the fabric of the entire family as a unit. When women suffer from negligence in gynecological care, the repercussions reverberate through their lives and lives of her loved ones. It is a matter of disruptions to the hope and stability of the entire family.

The incidence of medical negligence in this domain ranged from negligence in surgery, damage to other organs, refusing to provide timely treatment, refusing to provide case papers and absence of pre-operative care. This increases the risk for the patient seeking reproductive health interventions. Medical Negligence leads to heartbreaking consequences and shattering of the dreams, particularly for patients who approach health facilities with a hope to conceive and build families. The unfair trade practices cause betrayal compounded by the exploitation of vulnerable patients through deceptive marketing strategies aimed at maximizing profits.

In context to the above, social workers have a role in ensuring adherence to proper treatment protocols, providing crisis interventions, ensuring prevention of injuries during surgical procedures and facilitating emergency care by working in the cross functional team in the health sector. Moreover, to address the complex impacts of the negligence on patient and their families, the emphasis can be provided for holistic interventions for postoperative care, counselling, family therapy and group work.

4. General Medical Ailment:

Vicarious Liability of Negligence by Untrained Staff

Case	P.P. vs. Dr. P.B.
Consumer Complaint No.	1027/2008
Consumer Dispute Redressal Forum	Vadodara Additional
Medical Ailment	Poisonous Malaria
Date of filing	10/12/2008
Date of disposal	17/09/2016
Duration of Justice	7 years 9 months
Compensation Amount	Rs. 160,000

Description of the Case:

The complainant stays at Vadodara and a lawyer by profession. The complainant (patient) had poisonous (falciparum) malaria in July 2007. The patient went to the opponent's hospital where he was admitted. During the admission in the hospital, the bottle was administered through vein flow in the left hand. This vein flow was removed by the unqualified trainee staff due to which, the patient felt dizziness and swelling in the left hand. As the consequence, in the left hand, he developed **thrombosis** but the opponent doctor did not provide any treatment for the same and provided discharge.

Due to unbearable pain because of the thrombosis, he was once again admitted to the hospital. But due to unawareness of the opponent doctor, the patient developed **Septicemia**. Because of this medical condition, there was life-threatening impact to the patient's heart and lungs. Due to critical condition, he was admitted in ICU for 15 days. During admission, due to increased WBC (White Blood Cell) counts, the patient's condition was critical. He incurred Rs. 175,000 for ICU treatment. After discharge, he was admitted to Dr. C.M.S.'s Hospital where many lab tests were advised incurring the cost of Rs. 50,000.

Consequence of Treatment:

Because of treatment provided at ICU especially due to blood transfusion, the patient developed **poisonous jaundice (acute hepatitis)** in January 2008. Due to the medical condition, the patient was under depression and could not pass judiciary examinations. The

patient incurred Rs. 20,000 for jaundice and due to adverse reactions of medicines provided, the vision of the left eye was affected.

In addition, the patient had also incurred the loss of pay due to not being able to go for practice for almost one year due to the illness and his wife too had taken leave from her job for 1 month. Hence, there were also financial impacts on the family.

Consumer Forum's Observations:

Considering the arguments from both the parties and evidence produced, the consumer forum observed that the patient was admitted in opponent doctor's hospital for treatment of poisonous malaria wherein the treatment was provided with the vein flow in left hand. While removing the vein flow, because of untrained nurse's negligence, the complainant got swelling in hand. The doctor provided two medicines, but it was not controlled. Eventually, the patient developed thrombosis and septicemia. There was negligence by the untrained staff and the opponent doctor also did not produce any evidence of the training of the staff. Hence, there arises the issue of **Vicarious Liability**. For any negligence by the staff, the liability arises of an employer i.e. doctor in this case.

The patient did not take the treatment of the poisonous jaundice from the opponent doctor. The loss of vision was also after the poisonous jaundice which cannot be attributed to the negligence by opponent doctor. Also, the reason provided for failing in the judiciary examination was not directly attributable to the negligence by the doctor. The impact on the vision is also not connected with the negligence of the opponent doctor.

Hence, the complaint was partially considered. The negligence by the untrained staff was proven and the vicarious liability of the opponent doctor was established. The consumer forum provided a compensation order of Rs. 1,25,000 for the medical expenses from December 2007 till realization at 9% interest p.a. In addition, compensation of Rs. 25,000 for physical and mental agony and Rs. 10,000 for the cost of legal processes.

Fatal Oversight: Consequences of Ignorance in report finding leading to Death

Case	B.B.P. vs. Dr. H.P.
Consumer Complaint No.	247/2015
Consumer Dispute Redressal Forum	Ahmedabad City
Medical Ailment	Jaundice
Date of filing	31/03/2015
Date of disposal	30/10/2018
Duration of Justice	3 years 7 months
Compensation Amount	Rs. 515,000

Description of the Case:

The complainant was working in the factory to earn livelihood. The wife of the complainant (now onwards referred to as ‘patient’), K., had sudden abdominal pain on 13/1/2009 at her residence. The patient had earlier taken the treatment of the opponent doctor, the complainant took her to opponent’s hospital. Considering her serious condition, the doctor advised her to undergo certain tests such as Hemogram, Urine, SGPT, and Ultra Sonography.

The complainant arranged for all the tests, and it was found that the patient’s SGPT count was 1450.7 and identified that she was suffering from Jaundice. Without even checking the Urine report of the patient, the doctor prescribed several medicines with an advice to take **glucose syrup** and to stop taking butter and oil. The patient followed the advice accordingly and repeatedly took Glucon-D.

Since her condition was not improving, the complainant once again consulted an opponent doctor and he advised to continue taking Glucon-D and glucose syrup. As the patient’s condition further deteriorated, the complainant took her to R.H.M.H. at Patan on 15/01/2009 where the doctor advised for Hemogram test in which her S. Acetone level was found to be high. Accordingly, Dr. M. started the treatment but unfortunately the complainant’s wife passed away after a short treatment on 15/01/2009 around 2:30 p.m.

Upon inquiry with Dr. M. as regards to the death of his wife, he informed that the **previous doctor started her treatment only based on SGPT report. The presence of sugar in her urine report was ignored and she was advised to take glucose syrup and Glucon D because of which the Sugar levels further increased. Eventually, the patient passed away.**

According to the death certificate issued on 27/01/2009 by Dr. M., the reason of death was 'diabetes ketoacidosis + septicemia'.

Consumer Forum's Observations:

The consumer forum observed that due to untimely and unfortunate death of complainant's wife due to **sheer negligence** exhibited by the opponent in wrong treatment, the complainant has lost his wife, and his five children lost their mother. The family suffered pain, shock and suffering and the entire responsibility of bringing up his children had fallen on the complainant's shoulders. The patient was earning Rs. 3000 per month by working in the factory and due to her death, the family also suffered from financial impacts.

The opponent was ordered to pay Rs. 500,000 with 8% interest p.a. from the date of complaint i.e. 23/03/2015 till realization. Out of which Rs. 200,000 shall be payable directly to the complainant and Rs. 300,000, the complainant shall keep as a fixed deposit for 5 children in their joint name. It was ordered to pay Rs. 10,000 as an amount for mental pain and shock and suffering and a further amount of Rs. 5000 towards cost of complainant.

Negligence in Lung surgery

Case	M. S. vs. Dr. R. H., U.I.
Consumer Complaint No.	207/2014
Consumer Dispute Redressal Forum	Ahmedabad Rural
Medical Ailment	Cold and Fever
Date of filing	10/10/2014
Date of disposal	18/12/2021
Duration of Justice	7 years 2 months
Compensation Amount	Rs. 508,000

Description of the Case:

Because of the cold and fever, the complainant consulted his family doctor on 07/03/2013. He had treatment but since there was no improvement in his health, he was admitted to S. M. as an indoor patient on 03/04/2013 based on the advice of family doctor Dr. M.P. He was discharged from the hospital on 05/04/2013. Investigating the reports of the complainant, Dr. M. P. informed him that there was **accumulation of water in his left lung**, and if there was no improvement seen, he had to undergo a surgery.

With the medicines, there was no improvement, and hence, for surgery, the patient consulted an opponent doctor Dr. R. H. On 24/05/2013, the opponent doctor, after reviewing the reports advised to undergo operation due to accumulation of water. On 28/05/2013, the complainant was admitted to the hospital for operation and on 01/06/2013, he was discharged.

The opponent doctor prescribed the medicines and suggested to visit after 10 days. The complainant incurred the cost of Rs. 65,000 and of Rs. 25000 for medicines and reports.

The complainant continued taking medicines and went for consultation multiple times. The opponent doctor reassured him that he had recovered well. However, every time the complainant went for the checkup, he complained of having fever and cold and also of the pus discharge from the operated area. But the opponent doctor advised to continue taking medication and assured that he would recover.

When the complainant consulted his family doctor, he suggested that his lung had to be removed. When the patient was not recovered till 24/07/2013, he went to opponent doctor for treatment, still there was no recovery.

Due to negligence of the opponent doctor of not being able to conduct proper surgery, the consequence being pus discharge from the operated area, the complainant had to **undergo a surgery of left lung removal once again.**

Consumer Forum's Observations:

The consumer forum agreed on the medical negligence by the opponent doctor and ordered the doctor to pay Rs. 500,000 at 8% rate of interest per annum from the date of complaint till realization. In addition, the opponent was also ordered to pay Rs. 5000 for the mental agony and Rs. 3000 for the cost of legal proceedings.

Researcher's Comments:

General medical ailments can affect individuals of any age group, highlighting the need for more vigilance and care across all the health settings. There are systemic vulnerabilities that put the lives of the patients at risk, especially in the cases like mentioned above when the vein flow was removed by an untrained staff and the failure on doctor's part to address the patient's needs. Negligence causes severe repercussions, from the wrong diagnosis to wrong treatment because of the overlooked facts about medical condition. It leads to post surgery complications and prolonged suffering not only of the patients but of their families too.

From the above cases, there emerges a need for comprehensive training for both- the medical professionals and the support staff encompassing different aspects of medical care such as medical procedure, crisis interventions and awareness on vicarious liabilities. The refresher programs can also provide as a safeguard against medical negligence and thereby fostering culture of patient-centered care and accountability in the medical sector. With the focus on preventive measures and capacity building, healthcare systems can ensure the well-being of the patients.

5. Kidney and Gallbladder related:

Organ damage in Kidney stone removal treatment

Case	B.P. vs. Y. S.
Consumer Complaint No.	602/2010
Consumer Dispute Redressal Forum	Vadodara
Medical Ailment	Kidney Stone Removal
Date of filing	1/1/2010
Date of disposal	7/4/2015
Duration of Justice	5 years
Compensation Amount	Rs. 715000

Description about the case:

Complainant was suffering from **Kidney stone/calculi** and as a part of the treatment; Urethroscopy was performed by the opponent doctor on 26/5/2009. During Urethroscopy, due to negligence by the doctor, the complainant sustained permanent **trauma/incision on his left ureter causing permanent impairment**. Due to continuing pain, he again consulted doctor on 1/6/2009 and on that day opponent doctor revealed about the damage to the patient's ureter which was beyond control. Opponent doctor advised to consult for sonography (USG) and other doctors but refused to give referral letter and indoor and outdoor case paper. USG was carried out on 1/6/2009 at P.D.R.C.-2 which confirmed about the surgical trauma/damage. After that, complainant consulted other Nephrologist of the city who started treating the damage sustained during the surgery. Complainant had spent more than rupees 3 lacs for the same and had to take further treatment too. Due to this damage, the kidney stone/calculi could not be removed compelling the complainant to live entire life in pain and on medications. Complainant served legal notice for this matter on 2/3/2010 through his advocate. Through RPAD notice dated on 16/6/2010, complainant asked the opponent to provide certified copies of the indoor case papers of hospitalisation of the complainant, however, opponent neither replied nor provided case papers. Expert opinion was taken by the complainant from Dr P.N. T. As per him, negligence was made by the respondent during the second sitting for the removal of kidney stone where left ureter was damaged due to the act of

opponent which caused monetary loss, future course of treatment, pain, shock, mental agony and cost of legal proceedings.

Consumer Forum's Observations:

The consumer forum agreed on the negligence to have happened while performing surgery. Refusing to provide case paper or inadequate referral added to further consequences for the complainant. It was ordered to opponent to pay Rs. 7 lacs to the complainant at the interest rate of 9% p.a. from 26/05/2009 till realisation, Rs. 10000 for mental agony and Rs. 5000 for the cost of legal proceedings.

Damage to intestine leading to excruciating pain and subsequent surgery

Case	S.P. vs. Dr. S. P., Dr. N. O.
Consumer Complaint No.	371/2016
Consumer Dispute Redressal Forum	Ahmedabad City
Medical Ailment	Calculi in Gallbladder
Date of filing	09/05/2016
Date of disposal	18/12/2019
Duration of Justice	3 years 7 months
Compensation Amount	Rs. 4,63,765

Description of the Case:

On 06/09/2015, the complainant had severe pain in the stomach and consulted Dr. H. P. Based on sonography reports on 07/09/2015, it was identified that there existed Calculi in the Gallbladder. The complainant went to opponent no. 1 who suggested to undergo endoscopy and advised for the surgery for gallbladder. She was admitted on 11/09/2015 at the hospital and opponent doctor 2 performed surgery on 12/09/2015.

Since there was acute pain in the abdomen, the patient consulted opponent doctors, but the pain aggravated. On 14/09/2015, once again, the sonography was advised wherein 'mild free fluid' was seen and the medicines were prescribed. After that she was discharged from the hospital.

On 15/09/2015, she once again consulted opponent doctor 1. He advised for conducting Sonography and CT scan. From the reports, it was found that at the time of operation, **the**

opponent doctors mistakenly cut down the intestine leaving the complainant under excruciating pain.

On the same day, she was operated on by Dr. J.P. at the midnight. Due to infection with septicemia, **a part of intestine** had to be removed from abdomen. She remained in the hospital from 15/09/2015 to 28/09/2015.

Post 05/10/2015, the patient's health started deteriorating, she was once again admitted in A.Hospital where Dr. J.P. and Dr. N.K. provided her the treatment till 12/10/2015. On 12/10/2015, she was discharged.

The complainant had to continue taking treatment from 4/12/2015 till 21/12/2015. Between 15/09/2015 and 21/12/2015, the complainant had to undergo two surgeries due to negligence in first surgery, her life jeopardized and weight reduced to 22 to 25 kgs.

Consumer Forum's Observations:

The forum concluded the prevalence of medical negligence in the first surgery and ordered the opponents to pay compensation of Rs. 4,23,765 from the date of filing the complaint till the realization at 9% p.a. interest rate. In addition, they were ordered to pay Rs.30,000 for the pain, shock and suffering.

Researcher's Comments:

In both above cases, the medical practitioners were negligent while performing surgical procedures, leading to permanent trauma and impairment & compelling patient to take further treatments. In addition, when the complainant seeks the case papers and the records, they were also denied the access to it violating the integral right of accessing case records.

In such cases the role of social workers is to sensitise the patients to be proactive and be aware about the treatment given to them. In case the patient feels any deficiency in treatment, social worker must encourage the patient and the immediate caregivers to approach other doctor and take second opinion. Whenever the doctor advises patients to consult other doctor, social workers shall educate the patient to ask the written referral from the doctor and the medical staff. In addition, social workers can perform the role of ensuring proper maintenance of written case record (indoor and outdoor case papers) containing the minutest details about the case. Social workers must make patients understand the rights of patients. There also emerges a need

to guide stakeholders to provide expert opinion before forum since it has higher weightage. Even the opponent shall provide the statement by expert in defence. Specific details need to be furnished related to complain/defence.

Social workers also must explain about the ‘Burden of Proof’ which means it is the responsibility of the patient first to provide necessary evidence to prove negligence by doctor. After that, the onus is shifted to doctor to prove that he was not negligent.

6. Skin & Hair Related:

Mishaps from Medication: When wrong prescription causes allergic reactions

Case	S.G. vs. Dr. R.P.
Consumer Complaint No.	194/2018
Consumer Dispute Redressal Forum	Ahmedabad Rural
Medical Ailment	Skin Allergy
Date of filing	25/07/2018
Date of disposal	31/05/2019
Duration of Justice	10 months
Compensation Amount	Rs. 28000

Description of the Case:

The complainant visited Ahmedabad in April 2018 wherein he developed an allergy with itching near neck and hip areas. He visited an opponent doctor on 01/05/2018. The doctor mentioned that there was fungal infection near neck and hip areas which will be cured through medicines. In addition, he provided ‘Zydis cream’. However, after taking medicines and applying cream, his difficulties and pain enhanced. He once again met the opponent doctor, but he did not provide any further details.

When he went back to Mumbai, he showed his condition to Dr. S.S. who investigated the condition to be ‘seborrheic dermatitis tinea incognito and Id reaction’. When the complainant showed the prescription of the zydis cream, the doctor informed that due to **heavy dose of the cream, there was further reaction**. Because of the wrong medicines, the complainant faced

difficulties including the rashes and unbearable pain. He had to take further medicines due to his medical condition.

Because of the medical conditions, the patient had to travel frequently from Mumbai to Ahmedabad. He did not produce the evidence of the payment to the consumer forum but showed photographs which substantiated the pain and difficulties faced by the complainant.

Consumer Forum's Observations:

The consumer forum concluded that due to application of 'zydip cream', the complainant further suffered reactions. The forum ordered the opponent to compensate Rs. 20,000 at 8% rate of interest from the date of complaint till realization. In addition, the opponent was ordered to pay Rs. 5000 for mental agony and Rs. 3000 as the cost of legal proceedings.

Quandary of Hair Transplant Failure despite Assurances

Case	R.C. vs. Dr. B. B., P.PL
Consumer Complaint No.	684/2016
Consumer Dispute Redressal Forum	Vadodara City
Medical Ailment	Hair transplant
Date of filing	19/07/2016
Date of disposal	09/01/2020
Duration of Justice	3 years 6 months
Compensation Amount	Rs. 37,500

Description of the Case:

The complainant got attracted to the advertisement for **100% guarantee for hair transplant** and went for the hair transplant treatment for Rs. 65000. The opponent doctor had guaranteed that with the treatment, the complainant's hair would start growing. However, even after one year, there seemed no improvement in the hair growth.

When the complainant once again visited the doctor, he gave reassurance initially and later stopped responding. Hence, due to deficiency in services, the complainant filed the complaint in the consumer forum.

Consumer Forum's Observations:

The consumer Forum ordered the opponent to pay Rs. 32,500 to the complainant from 19/07/2016 till realization at 8% rate of interest per annum. In addition, the opponent was ordered to pay Rs. 2000 for the cost of legal proceedings and Rs. 3000 for mental agony.

Researcher's comments:

It is alarming to understand the scenario where the patient suffers from the difficulties from the wrong medication and false assurances provided by the medical professionals. It not only reduces the trust of the patients but also increases their sufferings, highlighting the need for diligence in dermatological care. When the medical practitioners provide 100% guarantees raise serious concerns about the integrity and the effectiveness of the medical procedures. When there is a breach of the duty of care as per reasonable standards, it leads to financial and emotional burdens, raising the importance to transparency, commitment, and accountability to fulfil the promises made to patients seeking these procedures.

7. Brain Related:

Young son succumbing to post-operative complications

Case	P.B.P. vs. Dr. Y.B. & BAH
Consumer Complaint No.	488/2009
Consumer Dispute Redressal Forum	Vadodara Additional
Medical Ailment	Enhanced size of CSF in Brain
Date of filing	19/6/2009
Date of disposal	2/6/2015
Duration of Justice	6 years
Compensation Amount	Rs. 510,000

Description of the case:

The complainant was working as Senior traction power controller in Indian railway in Vadodara. The son of the complainant, aged 20 years, was studying in the 3rd year of electrical engineering in one of the colleges in Vidyanagar. Usually, he used to come to Vadodara during weekends.

Identification of the medical illness:

On 27th September 2008, when the son came home, he complained of suffering from headache and was taken to K. H., Vadodara. Based on advise and examination of MRI report, Dr. K. advised the patient to visit Neurosurgeon.

On 30.09.2008, they contacted Dr. Y. B. from A. hospital, Vadodara. On 1/10/2008, it was examined that the patient had 'idiopathic Intracranial Hypertension' and that the CSF level of his brain is 26.5 mm and normal level should be 20 mm and hence, the operation would be required and within 3-4 days the patient would be normal. The doctor advised to do so to prevent the further vision loss for the patient.

First experience of incidence of negligence:

Based on doctor's advice, the patient and family consented for operation and on 2/10/2008, at 9:00 a.m.-12:00 p.m. the operation was performed. At around 5 pm, the doctor had advised to have juice. After having the juice, the patient started vomiting.

On 3/10/2008, the patient was provided with the medicines. However, the patient was unable to sit and use toilet properly despite being able to go himself. The doctor reassured that due to inserting pipe in the stomach part, he was having trouble, but with medicine and Intravenous treatments, he will be cured by 4/10/2008.

The condition of the patient was not improving. On 4/10/2008 at around 11:30 p.m., the patient was suffering from headache which was increasing gradually, and his body started trembling. Due to unbearable pain the patient was crying and was out of control.

Patient devoid of appropriate and timely treatment:

Considering the emergency situation, Dr. B.'s assistant Dr. A. contacted him, but Dr. B. **refused to come during the nighttime and the next day being Sunday, he said that he will now see the patient on Monday.** Since the patient, due to pain was shouting, Dr. A. threatened him not to shout, administered inhumanly and went away.

On Sunday, i.e. on 5/10/2008, the patient started closing his eyes gradually. The doctors told that he would be normal, but at 4:30 a.m., the patient was in comma.

On 6/10/2008, the organs of his body gradually stopped working and he was shifted to ICU for oxygen support. At 6 p.m., the doctor told that since the patient's condition was critical due to blockage in the vein of the brain, the doctor cannot give the treatment and advised to shift him to B.A.H., Vadodara.

Too late for the appropriate treatment:

The patient was admitted to B. Hospital through railway hospital at 8:30 p.m. After advising and studying the CT Scan report, the doctors advised that his brain was not working and due to pain, the patient had to be shifted on Ventilator support. There was no scope of operation and **no hope for his survival too!**

On 8/10/2008 at 1:30 p.m., the patient was declared dead.

Due to the negligence, the complainant had lost his son- his support in the old age.

If the doctor would have visited on 4-5 October 2008 (Saturday-Sunday) and could advice to shift him to B.A. H. on the same day, his son's life could be saved. Hence, the doctor had shown deficiency in service and negligence.

Consumer Forum's Observations:

The consumer forum while agreed to the sequence of events mentioned above, shared that the opponent doctor had adopted the consent procedure, but had not explained the consequences of the operation and complications attached. Merely taking signature on the consent form cannot be considered as **proper consent**.

Even when the patient was in the critical condition, still the doctor refused to take care of patient which becomes **the breach of doctor's duty** and **improper post operative care/treatment**. He also advised shifting the patient in the B.A.H. very late. Had the patient been shifted on 4/5 October 2008, the life of patient could have been saved.

The compensation depends upon the present earning, future prospects and liability of the family. If complainant's son would be alive, he could earn well and take care of their family well. The consumer forum concluded that there were deficiency and unfair trade practices on part of Dr. Y.B. and not of BAH.

The Forum ordered that Opponent No. 1 (Dr. B) shall pay the compensation of Rs. 500,000 with the interest rate of 9% p.a. from the date of complain i.e. 19/06/2009 till the realization. In addition, Rs. 5000 for mental agony and Rs. 5000 for the cost of proceedings were also ordered.

Researcher's Comments:

In the above case, negligence in multiple steps of the treatment process emerges. When the patient is in terrible condition, the treating doctor, rather than showing compassion, misbehaves which enhances the emotional effects arising out of treatment process. In addition, the patient was also devoid of the proper medical treatment due to unavailability of medical practitioner and delay in referral. By this, the medical practitioner failed to perform his duty to maintain due care and skill in treatment. The case was 'res ipsa loquitur' which means the case spoke for itself. Despite the Critical Conditions for 2 days, the doctor did not come to visit the patient. There has to be a mechanism wherein the equally competent doctor handles the case in case of absence of the main medical practitioner of the hospital. The presence of social workers in incidences like this could have gained support from the resource system.

8. Related to Cancer:

Delay in diagnosis in the terminal illness

Case	CERS, M.L. vs. Dr. K.S., P. Hospital and others
Consumer Complaint No.	153/2012
Consumer Dispute Redressal Forum	Ahmedabad Rural
Medical Ailment	Cancer
Date of filing	20/06/2012
Date of disposal	30/11/2019
Duration of Justice	7 years 9 months
Compensation Amount	Rs. 520,000

Description of the Case:

The wife of complainant no. 2 (referred as 'patient') obtained the treatment at the hospital of opponent 2 for the pile's operation. At the time of operation, the doctor had suggested the biopsy. On 30/07/2008, the report was obtained for the biopsy which mentioned that the patient did not suffer from Cancer.

According to the complainant, it was the wrong report because after the operation, the patient had continuous pain and fever. There were also small tumors seen near the stomach and right thigh area. When the complainant contacted the doctor, he suggested consulting Dr. P.S.

Dr. S. once again suggested to undergo biopsy, the report of which was received on 11/09/2009. **The report confirmed that the complainant's wife had cancer.**

Due to delay in diagnosis and the wrong report of this terminal illness, the patient was devoid of the urgent required treatment and eventually succumbed to cancer.

Consumer Forum's Observations:

The consumer forum concluded about the medical negligence due to which a husband lost his wife, and the children lost their mother. In addition, the complainant suffered pain, loss, and grief. The consumer forum ordered the opponents to pay to the complainant Rs. 500,000 at 8% rate of interest per annum from the date of complaint till realization. In addition, it was ordered to pay Rs. 15,000 towards mental agony and Rs. 5000 for the cost of litigation.

Researcher's comments:

In diseases such as cancer, timely treatment is of utmost importance. When the care for the cancer is delayed, it lowers the chances of survival and increases the problems associated with the treatment. It also increases the financial implications for availing the treatment. In the above case, although there was a screening at an early stage, the wrong report delayed the further treatment putting risk on the survival of the patient. This highlights the importance of second opinion of other doctors, proper scrutiny of the reports and appropriate palliative care along with the post-trauma counselling.



(Illustration from Times of India dated 08/09/2021 about Delhi High Court's Observation for complaint against Private laboratory)

9. Pediatric Case:

Child devoid of treatment in Critical Condition

Case	J.N., V.B. vs. Dr. P.B., N.I.I., Dr. P. P.
Consumer Complaint No.	1381/2004
Consumer Dispute Redressal Forum	Vadodara Additional
Medical Ailment	Cold and fever to 2.5 year old son
Date of filing	17/09/2004
Date of disposal	27/06/2017
Duration of Justice	12 years 9 months
Compensation Amount	Rs. 300,000

Description of the Case:

The complainant V. filed the complaint through J. N., voluntary consumer trust. The complainant's son R. was aged 2.5 years, was suffering from cold and fever, and was taken for the treatment of Dr. Y.P., MD on 17/1/2004. On 18/1/2004, the complainant contacted Dr. P.P. (having DHMS degree) who referred the patient to the pediatrician on 18/1/2004 at 2:00 p.m. The patient was admitted to Op. no. 1's C. Hospital. The opponent was not present at the time of admission and the staff started to administer the **glucose bottle without consulting opponent and even prior to the examination of the child by the opponent doctor.**

On 18/1/2004, the doctor did not turn up to examine the child as the opponent doctor was not present in the hospital.

On 19/1/2004, the complainant paid Rs. 2000 for initial charges of medical treatment and opponent hospital had taken consent of the parents for administering the oxygen due to respiratory disturbance at 60. The opponent did not examine the child properly.

On 18/1/2004, Dr. P.P. stated that the patient was having broncho pneumonia. According to the medical documents of 19/1/2004, air entry decreased maximum on right side and still the hospital mentioned that the general condition (GC) was stable. On the same day the opponent doctor mentioned that the GC was very poor.

Post that, opponent doctor 1 called Dr. J.S., Radiologist to see the dying child whose role was not justified in handling any pediatric emergency. On 19/1/2004 from 5:40 p.m., the opponent initiated the treatment for heart reviving and at 7:00 p.m., **the child was declared dead.**

The opponent doctor showed lack of proper care despite having qualification, skill and knowledge. In this way the opponent showed the negligence and the child collapsed.

The complainant also lodged the criminal complaint. The police drawn the inquest panchnama and got Postmortem report from Government Hospital for necessary action.

Reactions by the Patient's Family:

In the reply of the complaint, the opponent doctor stated that while they had taken due care for the treatment of the child Ritik including intravenous (IV) fluid, IV antibiotic, nebulization, pulse oximeter etc. On 19/1/2004, at 5:00 p.m., patient was serious. The opponent and the entire staff intended to provide him best medical care but patient had cardio-respiratory arrest. He was provided IV medicine adrenaline like dopamine drip, intubation and IPPR. Despite these

efforts, the child collapsed because of serious illness and not because of negligence on diagnosis and management on the part of the opponent.

According to the opponent, the relatives of the patient tried to blackmail the doctor emotionally and demanded money amount of Rs. 15000, but opponent refused to give money. The relatives built themselves in the mob and heavily damaged the furniture, fixtures and hospital property. The police then intervened and controlled the situation. According to opponents, the complainant had misused the provisions of the Consumer Protection Act, 1986.

Consumer Forum's Observation:

Considering the facts, affidavits, evidence and arguments, the consumer forum concluded that despite the medical condition of the child was deteriorating and was in critical condition, the opponent doctor did not come and visit, which shows the negligence on part of medical practitioner.

The forum observed that the child R. was 2.5 years and parents age was below 35 years. They were not dependent on the victim. It is difficult for the forum to compensate the amount in rupees and there is no golden yardstick for the compensation amount of the life.

The opponents 1 & 2 were ordered to pay a compensation of Rs. 2,25,000 for the death/loss of life with interest of 9% p.a. from date of complaint till realization. They were also ordered to pay Rs. 50,000 towards mental agony and Rs. 10,000 for miscellaneous expenses and Rs. 15,000 as the cost of litigation.

Researcher's Comments:

In the above case when the young child was devoid of treatment in critical conditions, it highlights the gap in the comprehensive health system affecting the health outcome for the patient. Whenever doctor accept the patient, they are bound by the duties of taking utmost care of the patient, it is unethical on their part if they fail to perform this duty that results to death on part of medical professionals. It is also observed in the above case, where the relatives of the patient themselves took law in their hands and started violence. Social workers have a role to play by becoming a mediator between the doctor and patients. By generating accountability within doctors on one part and by supporting relatives on the other part.

10. Aesthetic Surgery related:

An aesthetic surgery that failed

Case	A.G. vs Dr. V.P.
Consumer Complaint No.	123/2016
Consumer Dispute Redressal Forum	Ahmedabad Additional
Medical Ailment	Aesthetic/Weight Loss Surgery
Date of filing	12/02/2016
Date of disposal	05/10/2018
Duration of Justice	2 years 8 months
Compensation Amount	Rs. 207,000

Description of the Case:

The complainant had undergone thyroid surgery by Dr. M.T. at S. Hospital. After 3 months of the surgery, she developed skin issues near neck for which she was referred to Dr. V. P.- the opponent doctor.

The doctor, during the consultation suggested that she needed vacuum surgery for weight and fat loss (according to the reply of opponent doctor, it was for reshaping of the body- abdomino plasty/tummy tuck). Also, to remove the fat from the stomach part, an operation is needed. Through this, approximately 35 kgs of weight can be reduced. He also **guaranteed 100% results**. The relatives of the complainant were present during the time of consultation and the family agreed to take the treatment.

On 19/10/2013, the patient underwent clinical testing, consultation of other doctors and pathological reports. The patient was admitted to the opponent doctor's hospital on 20/10/2013 and the surgery was removing fat from stomach and chest area was performed.

After the surgery, the patient identified that despite not providing any prior information, her naval was closed. The patient's brother came from Porbandar and paid Rs. 3 lacs cash to the doctor on 21/10/2013 and on 24/10/2013, she was discharged.

After 3 days, she once again visited an opponent doctor wherein she was advised to dress twice a day. For that, she employed a nurse for 1.5 months. After 2.5 months, the opponent doctor operated on the hip which was informed as successful and on the next day, she was discharged.

The patient paid Rs. 1.5 lacs for operation, Rs. 10,000 for bandage and Rs. 5000 for medicines. For two years, the complainant regularly consulted the opponent. However, there was **no improvement in the shape, size, and weight of the body.**

Rather, the fat of the stomach, chest and hip increased. The place where the stitches were taken, there were white marks. Every day, the health of the patient was deteriorating. Hence, due to the opponent doctor's negligence, there was adversity faced and white marks had developed.

When the complainant enquired, the opponent did not provide any reply and told that they can do legal process if they want.

The complainant had provided their case file at the hospital. When they once again came for a visit, there were some **case papers missing from the file.** When the complainant's husband asked for the papers, they refused to provide the same.

After long discussion and deliberation, the opponent called the complainant on 07/04/2015 and informed them that the surgery and treatment has not been effective and suggested Bariatric Surgery at CIMSH. He also mentioned that he would help obtain 50% discount in the hospital. But, the complainant, already troubled by the medical treatments, refused to undergo further treatments.

The complainant sent the legal notice to seek compensation of Rs. 12 lacs for no improvement through medical treatment, physical and mental agony and white spots near operated areas. Rather than reduction in weight, the patient's weight increased from 112 to 115 kgs.

Consumer Forum's Observations:

The consumer forum observed that the opponent doctor was an 'Aesthetic Surgeon' i.e. for reshaping and repositioning of the body. After the Abdomino plasty, the complainant's naval was closed. Rather than reshaping, the patient's body was affected by the same. Hence, he failed to perform his duty as an aesthetic surgeon and showed **deficiency in the services.** Rather than improvement, after the surgery, the patient had to undergo physical and mental difficulties.

The consumer forum ordered the opponent doctor to pay the compensation of Rs. 2,00,000 from 12/2/2016 at 8% p.a. rate of interest till realization. In addition, it was ordered to pay Rs. 5000 for mental agony and Rs. 2000 for cost of legal proceedings.



(Case of death during aesthetic surgery of Kannada Actress for undergoing surgery at hospital who did not have the license of surgery- from Sandesh newspaper dated 19/05/2022)

Researcher's Comments:

The above case showcases the information asymmetry and communication gap between medical service users and medical service providers. In addition, it is also a case of unfair trade practices. When the patients are assured with the guarantees that the medical practitioner gives, they approach the healthcare system with a confidence of getting the right treatment and that they will be cured. In this case, the patient believed that her weight will be reduced, and doctor did not assume the responsibility by mentioning aesthetic surgery for reshaping the body. Also, no proper pre-operative information or briefing was provided to the patients.

When the patient herself is an obese, it meant that she is already at risk of developing other health conditions, now with operative procedures conducted on her, it enhanced this risk affecting her health. Rather than improvement, the health worsened. There emerges a need for informed consent processes, access to the case records, awareness on the rights of patients and counselling to the patient and family.

ANALYSIS OF THE CASE STUDIES

While the qualitative presentation of the cases provided an in depth understanding of the cases related to medical malpractices. This section includes quantitative analysis of the judgements related to medical malpractice passed from 1st April 2015 to 31st March 2023, providing insights into the number of cases disposed of from the consumer forums of Ahmedabad and Vadodara, cases in which the medical negligence/malpractice were proven, basis of justice, time duration and compensation; below are the brief description of what actually happened in these cases, impact/damage/injury caused to the victim and the family members and the observation of the consumer forums.

Following are the findings from the judgements of Medical Malpractice with respect to Consumer Protection Law.

(PTO)

Table 1: Total Number of Cases disposed of from the Consumer Dispute Redressal Forums of Ahmedabad and Vadodara:

Year of Case Disposal	Ahmedabad	Vadodara	Total
2015-16	3	17	20
2016-17	5	12	17
2017-18	6	27	33
2018-19	10	14	24
2019-20	12	18	30
2020-21	3	17	20
2021-22	6	24	30
2022-23	10	13	23
Total	55	142	197

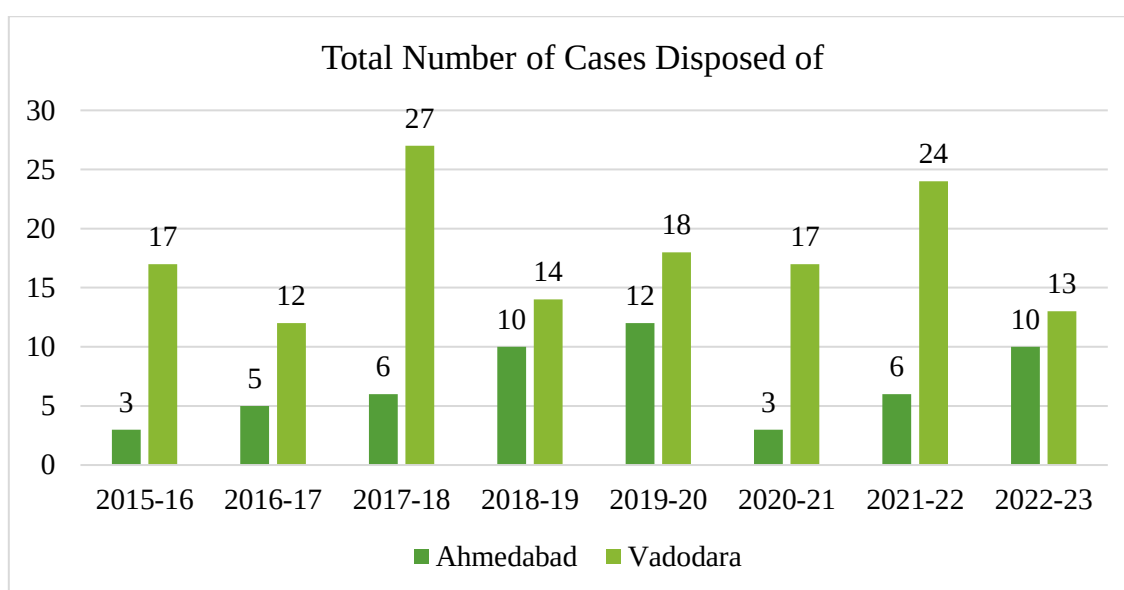


Figure 4 Total number of cases disposed of from Consumer Dispute Redressal Forums of Vadodara and Ahmedabad

As mentioned in the introduction of the chapter and in the research methodology, total 197 cases for the complaints related to medical negligence/malpractice were disposed of from the Consumer Dispute Redressal Forums of Vadodara and Ahmedabad. Out of all the cases, 55 cases had been disposed of from three Forums: Consumer Dispute Redressal Forum of (1) Ahmedabad, (2) Ahmedabad Additional and (3) Ahmedabad Rural.

Total 142 cases were disposed of from the two forms: Consumer Dispute Redressal Forum of (1) Vadodara and (2) Vadodara Additional.

While comparing Ahmedabad and Vadodara, it is evident that Ahmedabad, being larger city in terms of population, geographical coverage, and infrastructure, faces higher case load in the consumer forum. Despite having three consumer dispute redressal forum, the number of cases related to medical negligence disposed of, is significantly lower, nearly 1/3rd, as compared to Vadodara. This highlights the lack of awareness and reluctance to file complaints concerning adverse health outcomes. The variations in public awareness, accessibility to legal assistance, or cultural attitudes for seeking redressal could also play an important role.

Table 2: Distribution of the Cases related to Medical Negligence/Malpractice disposed of from different Consumer Dispute Redressal Forums of Ahmedabad and Vadodara:

	Ahmedabad City	Ahmedabad Additional	Ahmedabad Rural	Vadodara	Vadodara Additional	Total
2015-16	0	2	1	9	8	20
2016-17	2	3	0	4	8	17
2017-18	2	0	4	6	21	33
2018-19	4	2	4	6	8	24
2019-20	4	2	6	11	7	30
2020-21	1	1	1	1	16	20
2021-22	3	0	3	1	23	30
2022-23	3	3	4	8	5	23
	19	13	23	46	96	197

The above table shows the cases related to Medical Negligence/Malpractice disposed of from different consumer dispute redressal Forums of Ahmedabad and Vadodara. The majority of the cases disposed of were from Consumer Forum of Vadodara Additional (96 cases), followed by Vadodara (46 cases), Ahmedabad Rural (23 cases), Ahmedabad (19 cases), and Ahmedabad Additional (13 cases).

Almost half of the cases were disposed of from Vadodara Additional. It can be attributed to the infamous case of medical negligence in the cataract operation at Jalaram Chakshu Kendra and Sheth Vaduwala Hospital. The details of the cases are explained previously in this chapter, but a total of 17 cases were disposed of related to the incident in the year 2017-18. The cases went for an appeal in higher consumer dispute redressal machinery and once again were disposed

from the forum in 2021-22. Hence, the no. of cases disposed of in these two years was significantly higher than other years.

Table 3: Judgements of the Medical Negligence/Malpractice Cases:

Sr. No.	Particulars	Frequency	Percentage (%)
1	Proven	43	21.83
2	Not proven	48	24.37
3	Disposed Off	99	50.25
4	Delay condoned	5	2.54
5	Delay not condoned	2	1.02
	Total	197	100.00

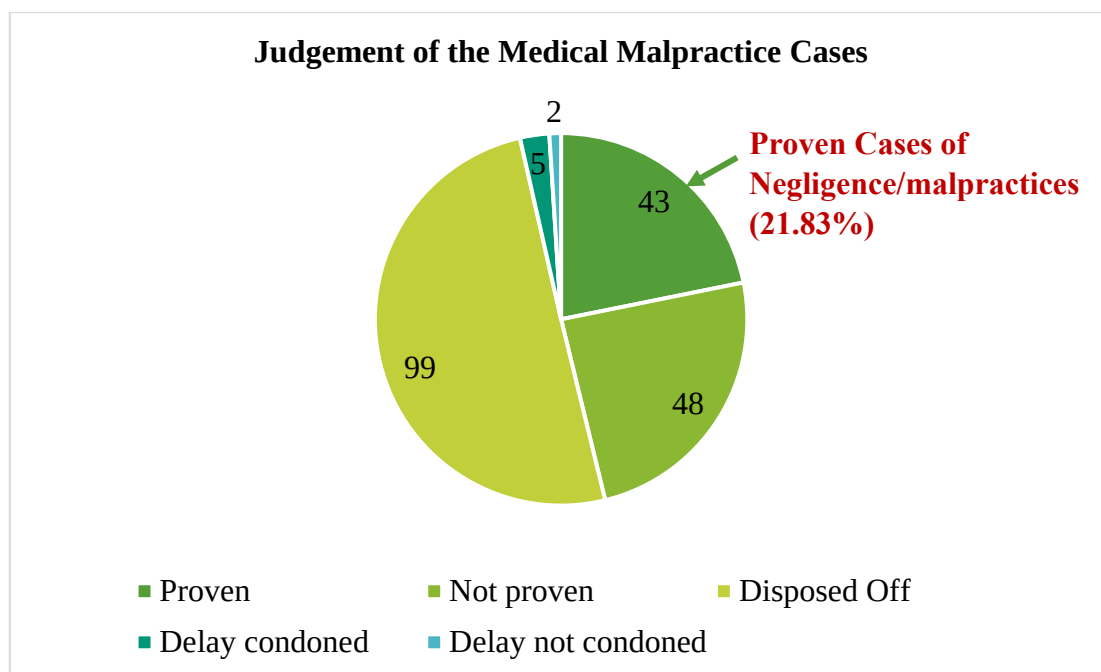


Figure 5 Judgement of the Medical Negligence/Malpractice Cases

From 197 cases that were disposed from the consumer dispute redressal forums of Vadodara and Ahmedabad, in 43 cases (21.83%) the medical negligence or malpractice by the medical practitioners were proven. In 48 cases, the negligence was not proven. Almost half of the cases were disposed off either due to absence of complainants, withdrawal of complaint, mediation between the parties, fulfilment of previous order and moved to higher court. In 5 cases, the complainant filed the complaint after the time-duration of filing the complaint i.e. 2 years.

However, this delay was condoned by the consumer forums of Vadodara and Ahmedabad. In 2 cases, the delay was not condoned by the consumer forums.

Table 4: Distribution of Judgements where the Medical Negligence was proven:

Sr. No.	Consumer Dispute Redressal Forum	Frequency	Percentage (%)
1	Ahmedabad City	4	9.30
2	Ahmedabad Additional	2	4.65
3	Ahmedabad Rural	7	16.28
4	Vadodara	5	11.63
5	Vadodara Additional	25	58.14
	Total	43	100

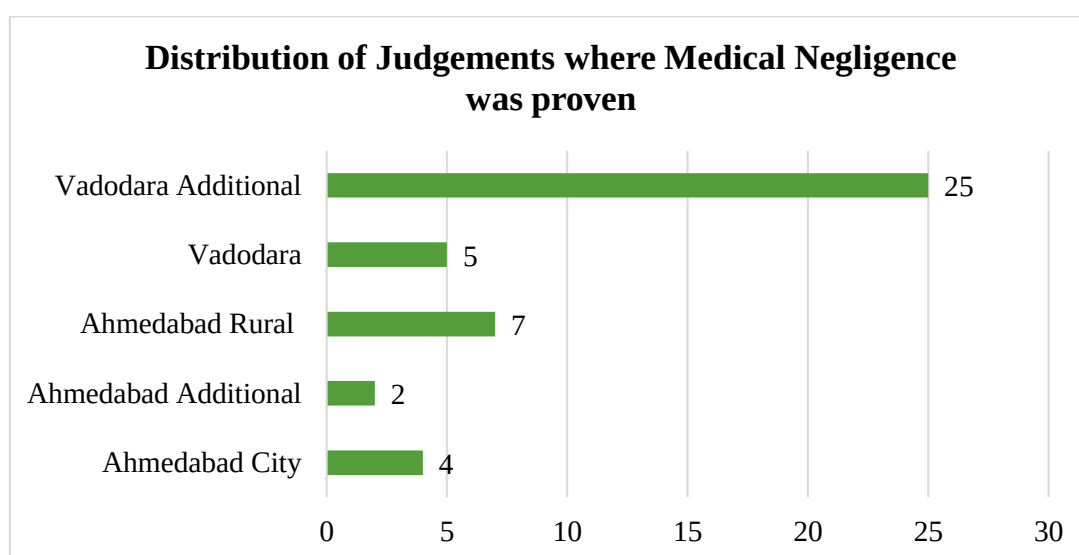


Figure 6 Distribution of Judgements where the medical negligence was proven

Out of the total 43 cases wherein the Medical Malpractice/Negligence by the medical service providers (Hospital, Medical professionals, staff members) were proven, most of the cases (25 cases) were from the Consumer Dispute Redressal Forum of Vadodara Additional. It was followed by Ahmedabad Rural (7 cases), Vadodara (5 cases), Ahmedabad City (4 cases) and Ahmedabad Additional (2 cases). It is important to highlight that the Consumer Dispute Redressal Forums of Vadodara passed judgements for considerable number of cases. However, except for the 17 cases related to cataract surgery, the instances where the negligence established were relatively similar in both the district.

The above scenario suggests a need for awareness generation regarding the redressal mechanism. The consumer of the medical services shall be equipped with the knowledge of the necessary documents to collect and retain during the treatment, fundamentals of seeking justice through consumer forums, for example significance of expert opinion and the basis of justice.

Table 5: Medical Ailment in the cases where Medical Negligence or Malpractice was Proven:

Sr. No.	Medical Ailment	Frequency	Percentage (%)
1	Eye related surgery	19	44.19
2	Orthopaedic ailments	8	18.60
3	Gynaecological issues	5	11.63
4	General Medical Ailment	3	6.98
5	Kidney and Gallbladder	2	4.65
6	Skin and Hair	2	4.65
7	Neurological Problem	1	2.33
8	Paediatric	1	2.33
9	Aesthetic Surgery	1	2.33
10	Cancer	1	2.33
	Total	43	100.00

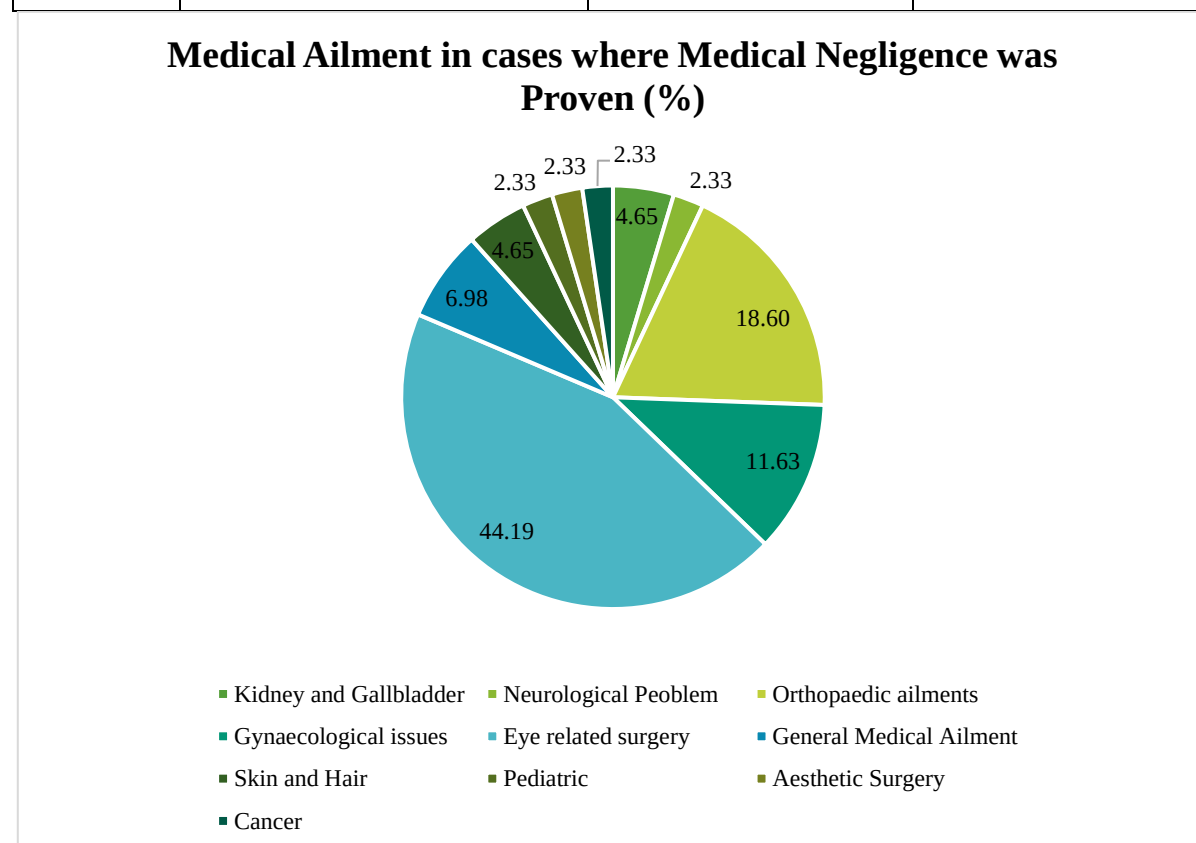


Figure 7 Medical ailments in the cases where the Medical Negligence was Proven.

Majority of the cases where the medical malpractice/negligence was proven were of the Eye related surgery (44.19%) (majorly cataract surgery). Due to using unsterilised equipment,

treatment by untrained staff and non-standard lens fitted in the eye, many of the people had lost vision in cataract surgery in one of the hospitals of Vadodara. As the complainants took support of one of the consumer organisations, they filed the case together and received the judgement together. Hence, the number of cases is higher. This highlights the importance of social advocacy and collective action.

The cases were followed by negligence in treatment of orthopaedic ailment (18.60%), gynaecological problems (11.63%) and general medical ailment (6.98%). The other cases were related to Kidney and gallbladder (4.65%), Skin and Hair (4.65%), neurological issue (2.33%), Paediatric (2.33%), aesthetic surgery (2.33%) and cancer (2.33%).

Table 6: Types of Medical Negligence/Malpractice

Sr. No.	Type of Negligence/Malpractice	Frequency	Percentage (%)
1	Negligence while performing surgery	31	72.09
2	Treatment by untrained Staff	19	44.19
3	Non-standard fixture	18	41.86
4	Unsterilised Equipment	17	39.53
5	Refuse to provide timely treatment by consulting doctors	5	11.63
6	Wrong treatment/Surgery	4	9.30
7	Unfair Trade Practice	3	6.98
8	Refusing to provide Case Papers	2	4.65
9	Delay in referral	1	2.33
10	Inadequate explanation by doctor	1	2.33
11	Not conducting preoperative care	1	2.33
12	Omission of important facts before treatment	1	2.33
13	Wrong Reports	1	2.33
14	Omission to administer important treatment process	1	2.33
15	Misbehaviour	1	2.33
	Total	106	

Based on analysing all the 43 cases in which the medical negligence was proven, there emerged 15 types of negligence. In most of the cases (70.09%), there was negligence while performing surgery, followed by the treatment by untrained staff (44.19%), non-standard fixtures (41.86%) and using unsterilized equipment (39.53%). The other kinds of negligence were refusal to timely treatment by consulting doctors (11.63%), adopting wrong treatment/surgery (9.30%), unfair trade practices (6.98%), refusing to provide case papers (4.65%), delay in referral (2.33%), inadequate explanation by doctor (2.33%), not taking pre-operative care (2.33%), omission of important facts before treatment (2.33%), wrong reports (2.33%), omission of important steps in treatment process (2.33%) and misbehaviour (2.33%) by the medical professional.

Basis of Justice to prove Medical Malpractice/Negligence by the Medical Practitioners:



Figure 8 Basis of Justice to prove Medical Malpractice/Negligence by the Medical Practitioners

To prove Medical Negligence in the court of law, the **burden of proof** first lies with the complainant to prove his complaint and then with the opponent to disprove the same. Considering the cases in which medical negligence was proven, above were the basis for the justice such as taking expert opinion, providing strong arguments, inability of medical practitioner to disprove the allegation, discrepancy in reply from the opponents, documents and records, guarantees provided by doctor, lack of proper investigation, absence of doctor and

presenting similar judgements passed by National or State Commission. In many cases, there was ‘res ipsa loquitor’ which means the thing speaks for itself and the gross negligence wherein it was evident that negligence had occurred.

Table 7: Amount of Compensation in the Proven Cases

Sr. No.	Compensation	Frequency	Percentage (%)
1	Less than 100,000	8	18.60
2	100,001-200,000	20	46.51
3	200,001-300,000	3	6.98
4	300,001-400,000	2	4.65
5	400,001-500,000	2	4.65
6	More than 500,001	8	18.60
	Total	43	100.00

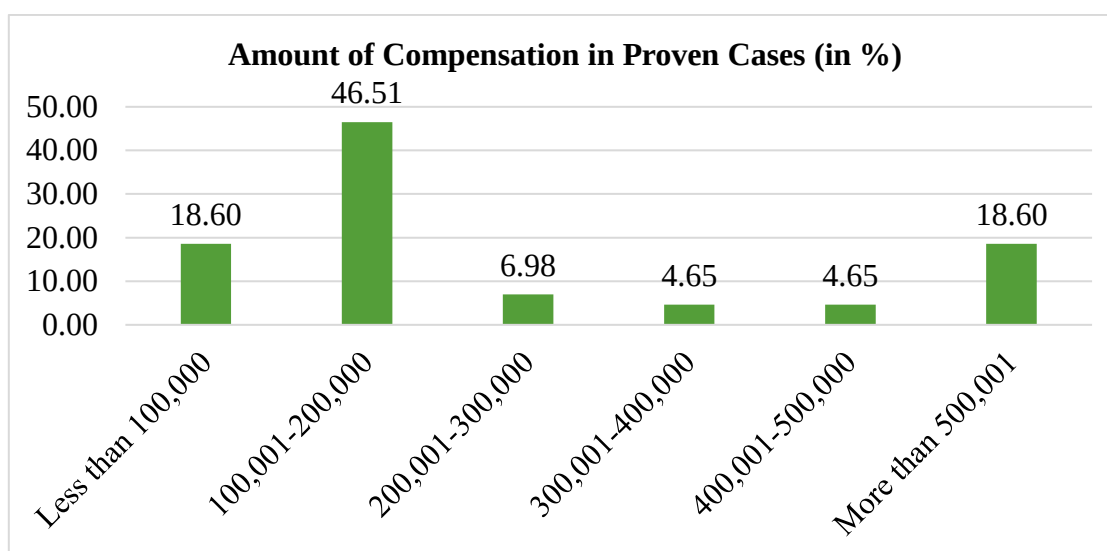


Figure 9 Amount of Compensation in Proven Cases

In most of the cases (46.51%), the Consumer Dispute Redressal Forum has ordered the compensation between 1,00,001 to 2,00,000 to be paid by the Medical Practitioners for the malpractice and negligence by them. It was followed by the compensation of less than Rs. 100,000 and more than Rs. 500,001 in 18.60% cases each. In 6.98% cases, the compensation amount of Rs. 200,001-300,000 followed by Rs. 300,001-400,00 and 400,001-500,000 in 4.65% each. **The average compensation from all the 43 proven cases was Rs. 2,43,068.** The compensation amount is calculated based on multiple factors such as expenditure for the medical treatment, financial loss to the family due to patient’s ill health, calculations based on

Workmen's compensation in case of death of the patient, amount for the mental agony and cost of legal proceedings.

Table 8: Time Duration between Case Filing and Disposal in Proven cases

Sr. No.	Time Duration	Frequency	Percentage (%)
1	3 years and less	6	13.95
2	4-6 years	13	30.23
3	7-9 years	5	11.63
4	10-12 years	1	2.33
5	13-15 years	4	9.30
6	16-18 years	13	30.23
7	19 years and more	1	2.33
	Total	43	100.00

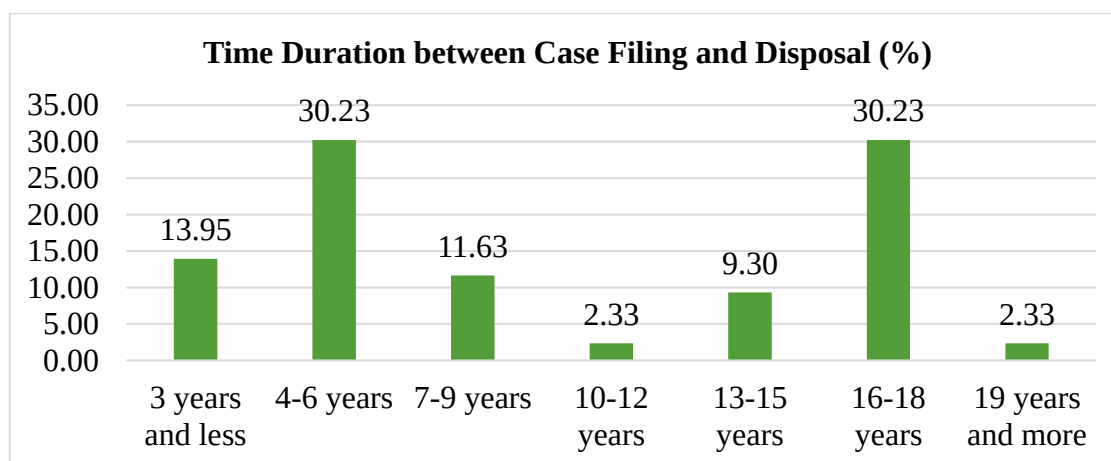


Figure 10 Time Duration between Case Filing and disposal in proven cases of Medical Malpractice/Negligence

In most of the cases, the time duration between case filing and Disposal was 4-6 years (30.23% cases) and 16-18 years (30.23% cases). It was followed by the less than 3 years in 13.95% cases, 7-9 years in 11.63% cases, 13-15 years in 9.30% cases. It was 10-12 years and more than 18 years in 2.33% cases each.

However, the **average time duration of justice was 7 years and 11 months** in the cases where the Medical Negligence was proven.

It is important to note here that one of the objectives of the Consumer Protection Act was to deliver justice and provide cost effective and speedy dispute redressal to the consumers. The data shows that the alternative dispute redressal system have not been able to achieve this over the past years. Considering the average time duration of justice to be more than 7 years, it shows the probable challenges of complex processes, insufficient resources including human resources and adequate ecosystem.

In the case of ***Dr. JJ Merchant and others vs. Shrinath Chaturvedi*** (Appeal Civil 7975 of 2001), the supreme court provided essential steps to check the disposal of case within statutory limit. Based on the recommendation, the National Consumer Dispute Redressal Commission and State Consumer Dispute Redressal Commissions were suggested to take action on:

- Exercising Administrative Control by ensuring appointment of competent people in the Consumer Forum,
- Ensuring time limit between filing the written statement of opponent party and case disposal,
- Documentary Evidence and affidavits of parties accompanying the complaints,
- Not allowing adjournment in ordinary cases.

There exists a legal maxim that says '*Justice delayed is justice denied*'. The medical negligence/malpractice leaves many biological, psychological, emotional and social trauma and agony not only to the patient but also to the caregivers. It is explained in details at different junctures in the subsequent chapters, it becomes imperative to deliberate upon the mental stress, emotional impacts and the financial cost that are attached to the redressal systems. While the social workers are important to be placed in the medical sector for the prevention of medical malpractices and promotion of ethical healthcare, it is equally important to carve the role of social workers in the consumer protection mechanisms for dealing with the issues associated with the dispute redressal.

This chapter, highlighted on the trends drawn from studying the judgements related to medical negligence and malpractices provided from the Consumer Forums of Ahmedabad and Vadodara. The retrospective study became a base of the researcher to prepare a framework for the prospective study majorly in designing the interview schedules for both the medical service users and medical service providers. The data analysis and interpretation from the prospective study is presented in the next chapter.