

A STUDY ON

MEDICAL MALPRACTICE AND CONSUMER PROTECTION LAW:

A SOCIO-LEGAL CASE STUDY

SYNOPSIS

IN PARTIAL FULFILMENT FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY IN SOCIAL WORK

RESEARCH GUIDE

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VADODARA

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Introduction

Health is an important field of social work, popularly known as medical social work. Social workers analyse the health issues in different context and work to protect health as a human right. Social work is a professional help extended to individual, group, and communities. Since social work aims at resolving problems and issues related to structural inequalities, socio-economic injustices and deprivation, the major task today and in coming days would be to promote social change by empowering people. Health social workers are positioned to work at an individual level and at community level. Social workers with a specialised knowledge of community health are also well placed to design, implement, and manage the aspects of health, which require involvement with the community and groups and with the health system.

This Study is a socio-legal in nature which combines the health setting reality in light of legal framework in India. Therefore, it is essential to understand the latest definition of the term Social Work, its link and role with reference to the health field.

Medical and Psychiatric Social Work is a specialisation of social work that attempts to solve mental, social, physical and financial barriers arising out of health ailment. It eases the treatment procedure by working in a cross functional team along with doctors and other hospital staff. It tries to apply social work tools and techniques in prevention, treatment and rehabilitation of psychosocial dysfunction, impairment in family dynamics, disability and emotional disturbance in health ailment or mental disorders.

Role of Medical Social Worker:

Psychosocial, physical and spiritual assessment for determining the resilience of the patients, their families and community support systems

Educating the patient's family on bio-psycho-social requirements of the patients and available resources and crisis intervention.

Counselling patients and their families.

Risk assessment of patients (self-harm like suicide or others such as child abuse, family violence).

Financial assessment and management for vulnerable clients.

Referring services for associating patients to available community resources.

Care coordinating and Discharge planning of patients.

Health as a Human Right:

Health is considered as the issue of Human Rights and Social Justice. Health, Human Rights and Development represent interdependent set of values, aspirations and disciplines. There is an interrelationship between promotion and protection of health and respecting, defending, and fulfilling human rights.

“It is my aspiration that health will finally be seen not as a blessing to be wished for, but as a human right to be fought for.” – Kofi Annan, United Nations Secretary General (1997-2006).

Health as a human right also underlies the understanding of human life with dignity. Internationally, it was first articulated in the 1946 Constitution of the World Health Organisation (WHO). The preamble, apart from defining Health as stated above, has further added that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”

Right to Health in Indian Context:

India’s legal framework protects the right to health. Constitution of India also considers health as a fundamental human right not directly, but as an indirect right, which arise or flow from the relevant articles.

Fundamental Rights: Article 21 for ‘Protection of life and personal liberty’: The **right to life** also includes right to livelihood, better standard of living, hygienic conditions at workplace and right to leisure. Hence, Right to Health is an inherent and inescapable part of dignified life.

Fundamental Duties: As per Article 51 A(h) of Indian constitution, there is a moral responsibility of doctor and legal duty of medical practitioner to maintain and preserve medical, medico-legal and legal documents related to patient in best interest of social and professional justice.

Directive Principle of State Policy: Directive principles are laid down in the Constitution which is fundamental in the Governance of the country, and it shall be the duty of the state to apply these principles while enacting the laws. Article 41, 42 and 47 mentions about the state’s responsibility to protect the right to health.

Violation of Right to Health- Grassroot Reality:

Many news and cases are reported now-a-days where it is observed that the right to health is frequently violated. Doctor who is put at the position of ‘God’ many a times for saving lives of people, commits act of gross negligence resulting to permanent impairment, trauma, financial burden or many a times death of a person.

One of the major complaints in the recent times is about the medical Malpractice and negligence in the health Setting. Healthcare error is the 8th leading cause of deaths in the world. As per the study by Supreme Court Advocate Mahendra Kumar Bajpai, who specialises in Medical Law, shows a 110% rise in the number of medical negligence cases in India every year. The study also reveals that 90% of all the cases of medical negligence involve hospitals and 12% of all the cases decided by Consumer Courts are on Medical Negligence. Between 60-66% of the filed cases are because hospital taking improper consent from relatives before performing certain procedures or switching hospitals or improper documentation throughout the course of diagnosis, treatment and reporting.

Ethical Violations in Healthcare:

As per Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, the principal objective of medical profession is to render services to humanity with full respect for the dignity of profession and man. Physicians should merit the confidence of patients entrusted to their care, rendering to each full measure of service and devotion. Provisionally or fully registered medical practitioner shall not wilfully commit any act of negligence that may deprive his patients from necessary medical care. It also regulates unethical and unlawful association of physicians with pharmaceutical companies or any other company for various purposes. Unethical practices are illegal, unprofessional and cause irreparable damages to the service users.

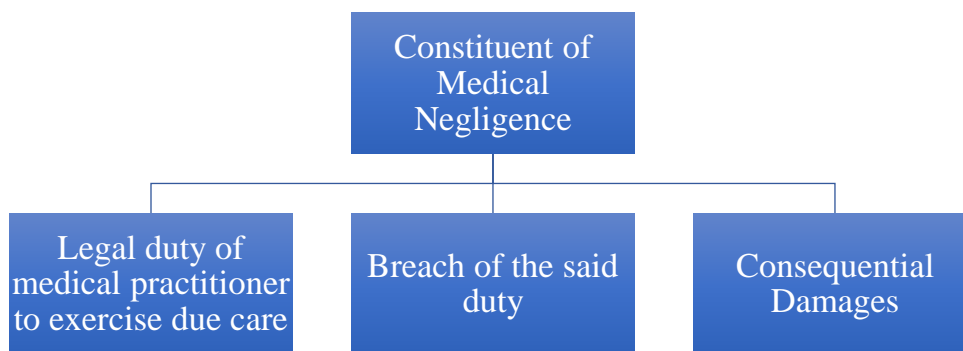
In present times, commercialisation has knocked the doors of medical profession. Many a times for attracting patient and earn money, deceitful methods are adopted. Unethical collusion between medical practitioners or hospitals and laboratories; prescribing medicines more than needed do not only violate patient’s right to health, but also exploit the patients and their families financially, emotionally, and physically. Self-regulatory standards in the medical profession have shown a sharp decline and that too can be attributed to the increased commercialisation of the profession.

Medical Malpractice:

The above-mentioned cases can be broadly categorised and named as ‘Medical Malpractice’. Often the term ‘Medical Negligence’ and ‘Medical Malpractice’ are used interchangeably. The word ‘negligence’ has its roots in the Latin word ‘Negligentia’ which is synonymous to carelessness, heedlessness, neglect or oversight.

As provided in the case *Jacob Matthew v. State of Punjab and another*, “Negligence is the breach of a duty caused by the omission to do something which a reasonably competent man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. ...

The definition involves three constituents of negligence.



Medical Negligence usually is considered as medical malpractice when the act of being negligent has been done intentionally. Medical malpractice is a wilful and intentional treatment by the medical professional that does not meet the standards of reasonable care and results in the damage or loss for the patient.

In both the cases, the sufferers become the patients with whom such incidences have occurred and their caregivers. The victim is not affected only physically, but also mentally, emotionally, socially, and economically. Hence, for the protection of larger population to Indian legal framework has devised mechanisms to restore justice in such cases.

Attempts by the Guidelines and Legal Mechanisms to Protect the interest of patients:



There are attempts by guidelines and legal mechanisms set up to protect interest of patients in private and public sector. The constitutional provisions have been discussed above. Apart from this, the legal liability on the medical professionals in cases of Medical Negligence is realised by the Civil Law, Criminal Law- The Indian Penal Code, 1860 and a professional framework by the Indian Medical Council Act, 1956. In addition, the Consumer Protection Law provides an alternative dispute redressal system where the consumers can approach the Consumer Forums in case of violation of their rights, safeguarding against unfair trade practice and to receive speedy redressals. The law also protects the patients as ‘Consumer’.

The Consumer Protection Law:

Among the other remedies of reducing/preventing/compensating for the vulnerable patients, the consumer protection act was devised to protect the consumers from the (objectives of COPRA) in general. In the history of Indian Legislation, enactment of Consumer Protection Act, 1986 reveals the recognition and growth of consumer jurisprudence. The consumer Protection Act is a compassionate social legislation which protects the rights of consumers to be protected against hazardous goods and unfair trade practices, also to seek redressal in consumer disputes. It provides a platform for Alternate Dispute Resolution for consumers across the country.

The act applies to all the goods and services, excluding goods for resale or for commercial purpose, services rendered free of charge or under the contract of personal service. In the year 1995, after a decade of enactment of the Consumer Protection Act, 1986, medical profession was included in the purview of the act. In the year 1995, in the case of the **Indian Medical Association vs. V. P. Shanta and Ors.**, III (1995) CPJ 1 (SC), the Supreme Court decided on the issue of coverage of medical profession within the ambit of Consumer Protection Act, 1986.

The consumer Protection Act, 1986 was replaced by the Consumer Protection Act, 2019. Earlier there was a debate on whether the medical profession was included in the new bill as it wasn't explicitly mentioned in the bill. It was also expressed by government officials that medical will not be included under the purview of services by incorporating the expressed concerns of medical fraternity. However, the definition of 'Deficiency in Service' resolves the confusion by including Medical Negligence.

Role of the Social Work:

Health services are very crucial in mitigating the sufferers and protecting the interest for one's survival. Medicine is a complex science, unreachable to even educated persons let alone the illiterate and poor populations. So far in Indian Culture, the doctor patient relationship fully functioned with trust by the patients and humanity on doctor's side. However, the recent data as well as live illustrations of Medical Malpractice have been rising. It therefore becomes essential for the medicos to understand and practice the professional ethically. The larger masses too have to be educated about their rights as patients in proven cases of medical negligence and malpractice.

Social Work has an important role in reducing the vulnerability of the poor masses. When it comes to health field, it becomes even more imperative. Social workers as a helping profession have precisely have to bring the service givers and service users to be more aware about how to evade incidents of malpractices by becoming conscious by each other's rights and responsibilities.

While the field of health and the role of medical social worker is well-carved, but this challenge of unhealthy, negligent, and wilful malpractice is hardly focused among various role of medical social worker.

Researcher desires to fill this research and practice gap by taking up this study and to increase consciousness of both stakeholders. It is time now that with the help of systematic research,

the goal is achieved where both these parties accept mutual responsibilities with active use of a rapid remedy system which the Consumer Protection Act offers. This is where an attempt is made to go deeper into the experiences, the level of awareness, views and opinions about each other.

It is with a hope that the final outcome of this research will contribute towards fair and just practices. It is with the objective to suggest a preventive module where neither of the stakeholder has to suffer and the right to Health is protected.

Research Methodology

Just as the topic of doctoral research work was conceived and formulated, its importance was further enhanced by the fact that the Bill for Amendment of the Consumer Protection Act, 1986 has passed in the Indian Parliament and the act is now replaced by the Consumer Protection Act, 2019. There are some loose ends which eventually would evolve into concrete results in strengthening the consumers in general.

It was in the year 1995 that the Supreme Court explicitly expressed in its judgement of **Indian Medical Association vs. V P Shantha and ors.** that the cases of medical malpractice/negligence be included within the ambit of Consumer Protection Act, 1986. Hence, Consumer Protection Law became a tool for ensuring justice for the victims of medical negligence/malpractice.

The first section of the synopsis explains various concepts involved in the research with respect to Health as a Human Right, Medical Malpractice, and the Consumer Protection Law from medico-legal point of view. This section attempts to elaborate on the Research Methodology that covers the rationale and significance of the study from Social Work perspective, Research Questions, Objectives, Research Design, Universe, Sampling and the tool for Data Collection.

The study is titled as ‘MEDICAL MALPRACTICE AND CONSUMER PROTECTION LAW: A SOCIO-LEGAL CASE STUDY’

Rationale:

Health is a human right as expressed by the 1946 Constitution of World Health Organisation (WHO) and the 1948 Universal Declaration of Human Rights (UNDHR) and various other International and National Bodies. In India too, fundamental right of ‘Right to Life’ (section 21 of Constitution of India) include right to health. Any act of ‘Medical Malpractice’ violates this integral human right. It is a breach of duty by doctor to take reasonable care and skill resulting injury/harm/loss to the patient. The legal framework of India lays down the provisions for restoring justice to the victims of Medical Negligence/Malpractice and protects health as a human right.

One such quasi-judicial framework which provides protection to the healthcare service users is the Consumer Protection Act, 1986 which is now replaced by the Consumer Protection Act, 2019. It is for the protection of interest of consumers and for that, establishing authorities for effective administration and speedy redressal of consumer disputes. When the consumer

protection act, 1986 was enforced, medical field was not included in the act. Medical profession was included within the definition of 'Service' only after the case of Indian Medical Association vs. V. P. Shantha and ors. in the year of 1995 i.e. after a decade of enactment of the legislation. Earlier it was difficult to ensure accountability of the medical professionals or to provide compensation for the loss occurred to the aggrieved parties. With this machinery, medical service users can access the justice delivery system as a consumer availing professional services of medical service providers. It is an important instrument in ensuring justice to the vulnerable populations who have been victimised on account of Medical Negligence/Malpractice.

Medical Social Work is one of the important fields of social work and it is very crucial to intervene in the cases of Medical Negligence. The scenario has been studied from the legal and medical point of view; however, no literature has been developed for the social work intervention in the incidence of 'Medical Malpractice'. As sufficient time i.e. almost 25 years has passed from the inclusion of health in the Consumer Protection Law, it is a correct time to take a stock and carve out the role of social work professional to prevent the occurrences of cases of medical malpractice, to restore justice to the parties affected and to protect the rights of concerned stakeholders. It is against this background the study was chosen to be undertaken as a part of doctoral research work.

Significance:

Healthcare error is 8th leading cause of deaths in the world. As per the study by Supreme Court Advocate Mahendra Kumar Bajpai, who specialises in Medical Law, shows a 110% rise in the number of medical negligence cases in India every year. The study also reveals that 90% of all the cases of medical negligence involve hospitals and 12% of all the cases decided by Consumer Courts are on Medical Negligence. Between 60-66% of the filed cases are because hospital taking improper consent from relatives before performing certain procedures or switching hospitals or improper documentation throughout the course of diagnosis, treatment and reporting. (Yadav and Rastogi, 2015)

Healthcare delivery affects the interest of larger community. Stakeholders directly affected by Medical Negligence are medical service users and medical service providers. Understanding the incidence of Medical Malpractice/Negligence through social work point of view is very important. Any incidence of malpractice results in the injury, harm or loss to the patient. Apart from physical injury, it affects the patient emotionally and psychologically followed by the

stress to take the further treatment. Moreover, it creates huge impact on the caregivers and dependent family members. Further, the family suffers the monetary loss to treat the damage occurred, for further treatments, cost of legal proceedings etc. Although, when the negligence is proven in the complaint filed, a patient and family members may get the compensation, but it is important to ponder whether monetary compensation is enough to repair permanent or temporary impairment, mental agony, temporary or permanent loss of work/income. Due to medical negligence, patient will be affected physically, socially, economically and psychologically.

In addition to this, at times, medical practitioners are blamed for the medical negligence even when due care was taken. Caregivers of patient may not be able to see their near and dear ones in pain or sometimes, the unexpected death of patient may lead the family members to allege the doctor for medical negligence. At times, there are possibilities of the family members to take law in their hands without waiting for redressal machinery to provide order.

Since Social Workers locate people's experience of health and illnesses in their social, economic, political and environmental context, intervention is very important in the cases of medical negligence. Social workers can intervene at Micro, Mezzo and Macro Level to prevent the cases of medical negligence, as well as restoring justice to the victims of medical negligence. Social Worker can act as a link between community, client, medical professionals and resource systems or the redressal machinery. Social work analyses a person in totality and hence can understand the client better. Health is an issue of Human Right and Social Justice which are central to social work values. In the cases of medical malpractice, the social worker has the role of capacity building, advocacy, advisory, consultative services and networking.

Usual trend as per recent scenario is when there occurs an alleged case of malpractice or negligence, the stakeholders become aware and take legal help. But it is essential to study the awareness among the community about medical malpractice and the remedies that victims can resort. In order to reduce/prevent the occurrence of such case, this is one area of social work intervention which is less explored. Hence, the ultimate objective of carrying out the study is to prepare a module for social work intervention in the cases of Medical Malpractice/Negligence.

The findings of the Study will be helpful to the Social Workers and Social Work students placed at Medical Settings for the intervention for prevention of malpractice and restoring justice.

Further, it can also support the Medical Service Providers as a guideline to practice in a way to prevent the breach of legal duty of care of their part and to avoid the consequences thereafter.

Most importantly, the finding and social work intervention module will be beneficial to the medical service users and the community members to a large extent since it will consist of the key approaches of awareness generation about the medico-legal aspects, resources available and redressal machinery eventually focusing on easing the healing process for the members of the community.

In addition, it will serve as a source of reference to the Healthcare delivery governance system and the legal practitioners in further benefit the related stakeholders.

Research Questions:

Following are the research questions based on which the research will be carried out.

1. What is the Magnitude of incidents of Medical Negligence and Malpractices?
2. What are the types in the cases of Negligence?
3. What are the types and patterns of Malpractice?
4. From the reported cases, what is the rate of conviction?
5. How many cases have been awarded compensation/justice?
6. How many cases were not proven and on what grounds?
7. How much was the pace of justice delivery and timespan between justice sought and case disposal?
8. How many cases have gone for appeal in the higher courts?

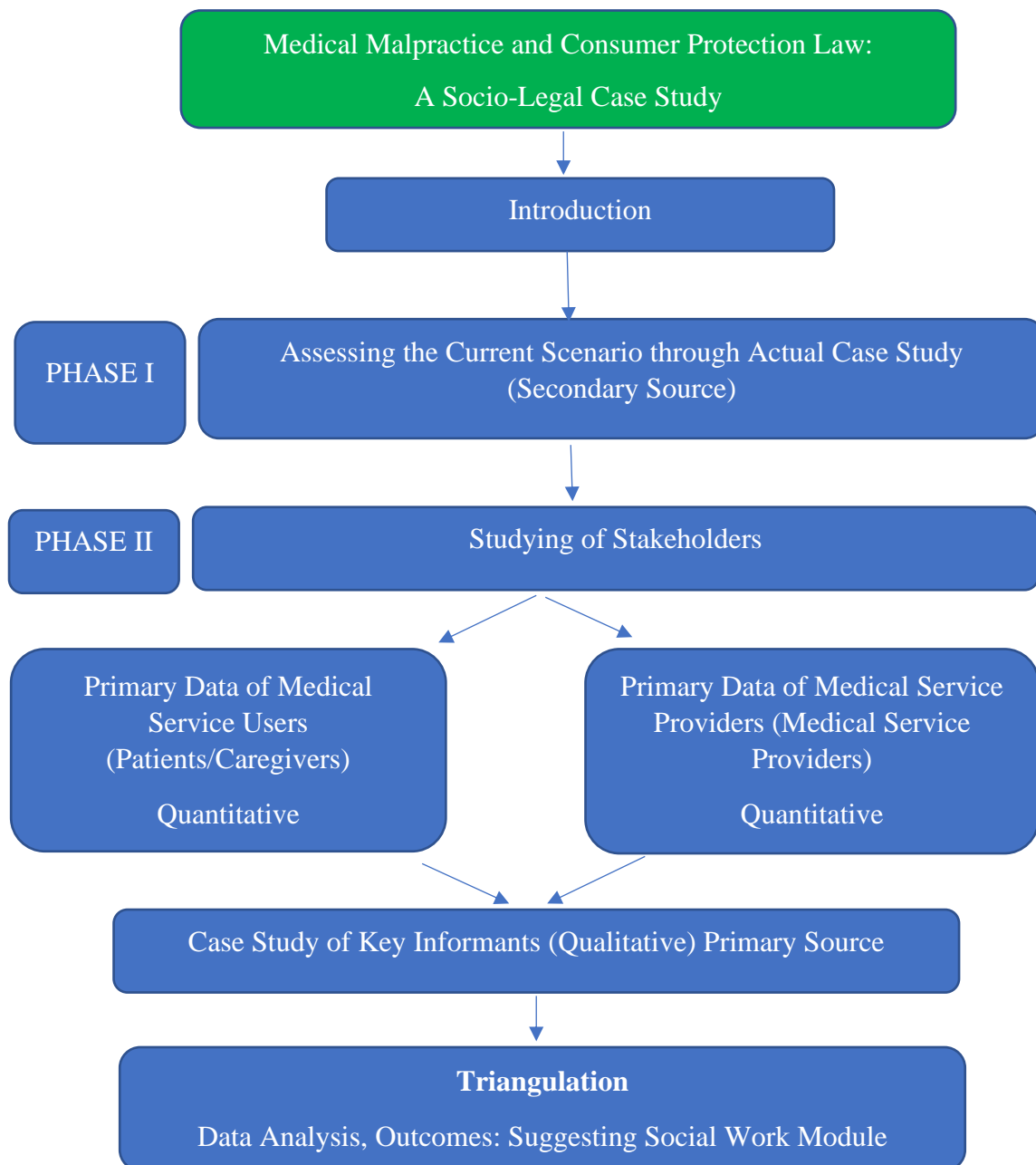
Objectives of the Study:

1. To study the magnitude of incidents of medical negligence and malpractices.
2. To understand the types and patterns of medical negligence and malpractice.
3. Based on the order provided, to study the rate of conviction/disposal from the reported cases and the cases where compensation/justice was awarded.
4. To study the cases in which negligence was not proven and the grounds/basis of the same.
5. To analyse the pace of justice delivery and time span between justice sought and case disposal.
6. To find out number of cases which have gone for appeal in higher courts.

7. To study the level of awareness among respondents about medical malpractice/negligence and the Consumer Protection Law.
8. Based on the findings, to prepare a module for social work intervention in the cases of Medical Malpractice/Negligence in mainly creating community/stakeholder's awareness which enable prevention of problem and restoration of justice.

Brief Outline of the Methodology:

In order to fulfil the above mentioned objectives, the following methodology has been adopted.



Research Design:

The study is **descriptive research** as it describes the level of awareness of the primary stakeholders i.e. medical service users and providers about Medical Malpractice and the Consumer Protection Law. In addition to this, the cases already disposed of from the Consumer Dispute Redressal Forums of Vadodara and Ahmedabad districts are revisited. An elaborative study in order to describe the nature and type of medical malpractice/negligence, basis of justice, pace of justice delivery and system of award/compensation through social work lenses has been carried out.

Mixed approach is adopted involving both the quantitative and qualitative method to study the phenomena. While the demographic details of the respondents, part of the awareness regarding the concepts is analysed quantitatively, an attempt is made to encompass their real-life experiences and actual/probable responses when the incidence of Malpractice occur. Similar structure is followed when the case judgements are studied. The demographic details, medical disciplines in which the cases are registered, average time for disposing the case etc. are explained quantitatively, while the comprehensive presentation about the important selected cases is done qualitatively.

Operational Definitions:

- 1. Medical Malpractice:** “Medical Negligence is a breach of the duty owed by a doctor to his patient to exercise reasonable care and skill, which results in some physical, mental or financial disability”. (Porkodi and Haque, 2015)
For the purpose of study, medical malpractice includes medical negligence. The same definitions mentioned above has been incorporated into the study by researcher.
- 2. Consumer Protection Law:** Consumer Protection Law refers to the Consumer Protection Act, 1986 replaced by the Consumer Protection Act, 2019 which is a law designed to protect the interest of consumers and for timely and effective administration and settlement of consumers’ disputes.
- 3. Medical Service Providers:** Medical Service Providers, for this study, consist of medical practitioners providing their services at Civil Hospital, Ahmedabad and Sir Sayajirao General (SSG) Hospital, Vadodara.

- 4. Medical Service Users:** Medical Service Users, for this study, consist of the patients either visiting Outpatient Department or admitted in ward and their immediate caregivers at Civil Hospital, Ahmedabad and SSG Hospital, Vadodara.

For the purpose of study, the cases which have already been disposed off have been scrutinised as well as the awareness of the respondents has been ascertained. Hence, the study has been bifurcated into Retrospective Study and Prospective Study. The methodology is separate in both the case as follows.

Universe:

Universe of this study is as follows:

- 1. In Retrospective cases:** Universe in Retrospective cases is all the complaint filed in all the 38 consumer dispute redressal forums of all the districts of Gujarat State.
- 2. In Prospective cases:** Universe consists of all the medical service users and medical service providers of all the public hospitals of Gujarat state.

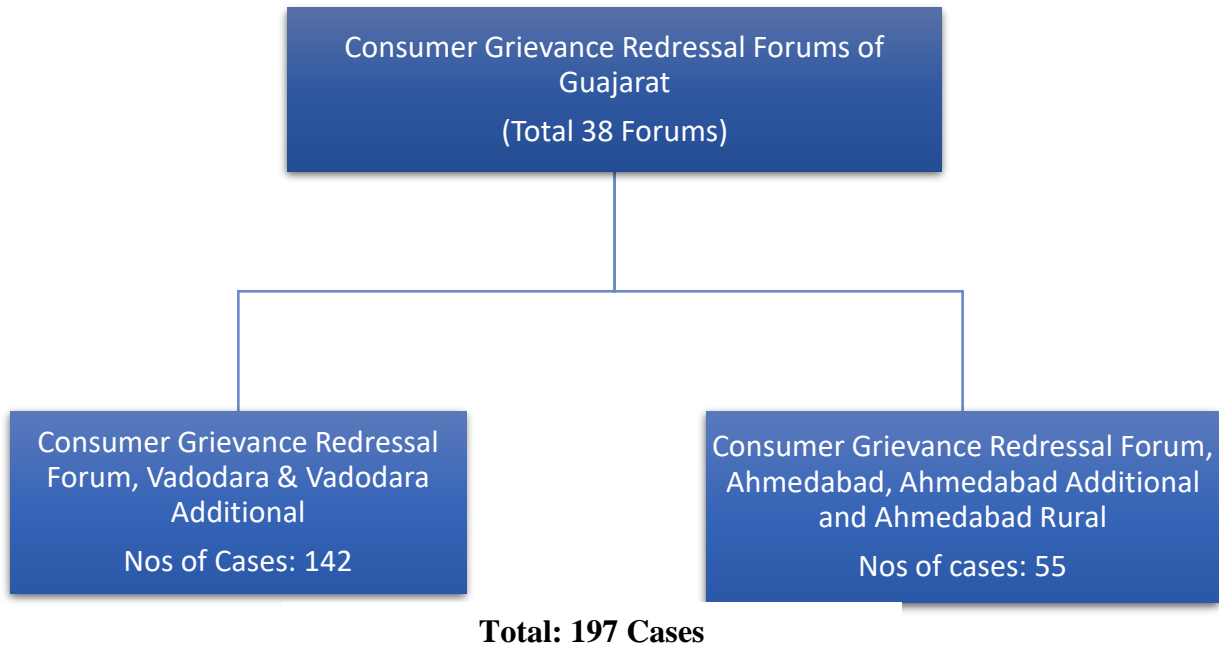
Sample and Sampling:

Sample for the study consists of the following:

- 1. In Retrospective Cases:** Using cluster sampling, two clusters of central Gujarat state have been selected for studying the complaints of medical negligence/malpractice disposed of from the Consumer Dispute Redressal Forums of Vadodara and Ahmedabad districts. Researcher studied all the cases of medical negligence/malpractice disposed of between 1st April 2015 to 31st March 2023 i.e., past 8 years will be undertaken for the study.

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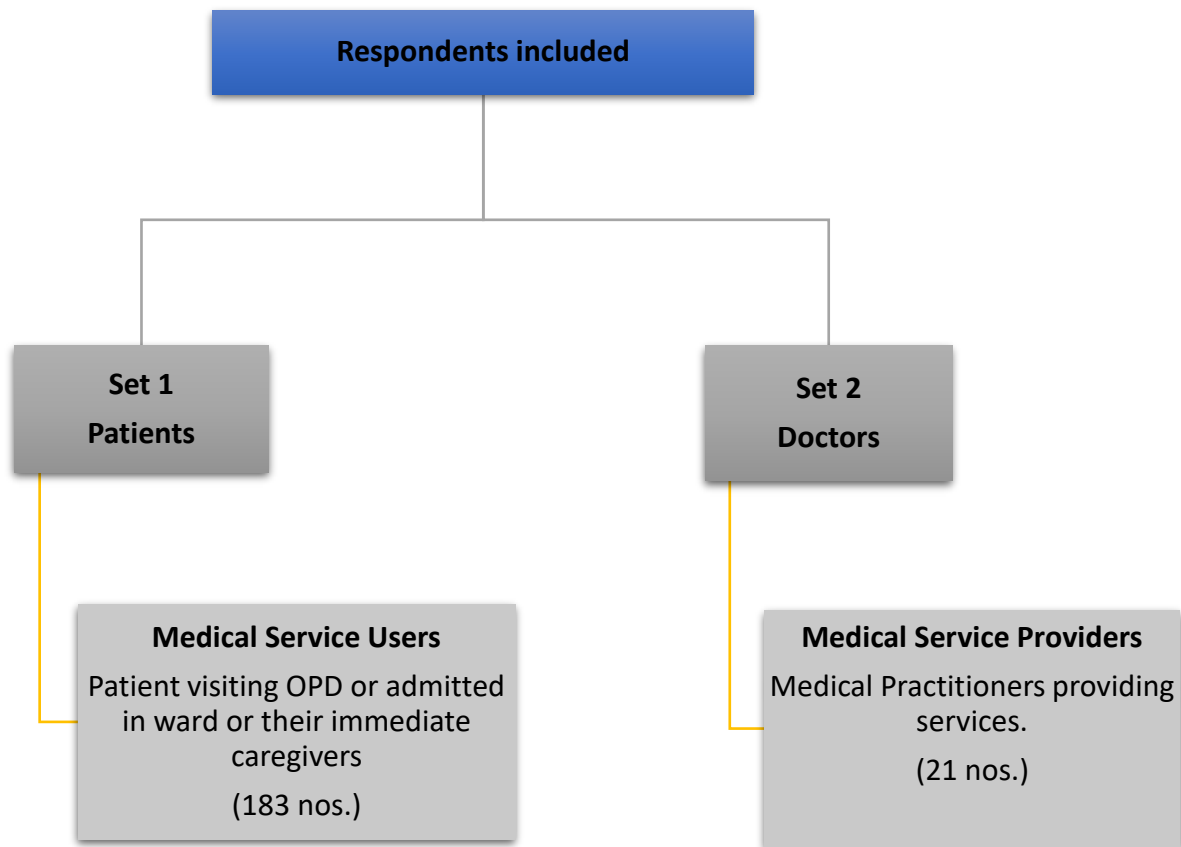
Medical Malpractice/Negligence related



(Cases of Medical Malpractice disposed off between 1st April 2015 to 31st March 2023)

2. **In Prospective Cases:** In prospective cases, cluster sampling technique has been used in which Public Hospitals of Vadodara and Ahmedabad District which belong to Central Gujarat State will be selected. The respondents consist of the medical service users i.e. patients and their caregivers as well as medical service providers i.e. Medical Practitioners of Sir Sayajirao General Hospital of Vadodara and Civil Hospital, Ahmedabad.

- (i) **Medical Service Users:** Data is collected from the patient who has visited the outpatient department or admitted in either of above mention hospitals in any of the wards or their immediate caregivers.
- (ii) **Medical Service Providers:** Medical Practitioners providing duty in SSG Hospital, Vadodara or Civil hospital, Ahmedabad as mentioned above.



Tool for Data Collection:

- **Retrospective Study** is conducted through **Qualitative method** through **Secondary Sources**. **Case Study and Content Analysis method** of the research is used for studying the records of cases disposed of related to Medical Negligence/Malpractice in Consumer Disputes Redressal Forum of Vadodara and Ahmedabad during time-period mentioned above.
- **Prospective Study** is carried out through **Quantitative method** through **Interview Schedule** from respondents i.e. from **Primary Sources**.
- Thus, mixed method-QQ study methods have been used.

Inclusion and Exclusion Criteria:

For Medical Servicer Users-Inclusion Criteria:

- 1) Only those respondents whose age was 18 years and above were selected for conducting the interview.

Exclusion Criteria:

- 1) The patients who due to their illness were in vulnerable position to interview or deceased were excluded.
- 2) Children and person with mental disability were excluded.

For Medical Service Providers: Inclusion Criteria:

- 1) The resident doctors, MBBS interns, Consultants at the SSG Hospital, Vadodara and Civil Hospital campus including Government colleges at the Campus, Ahmedabad were included.
- 2) The doctors must be studying or practicing Allopathy Medicine.

Exclusion Criteria:

- 1) The doctors from AYUSH Discipline (any other discipline except for Allopathy) were excluded.
- 2) Paramedical Staff were excluded.

Content Validity of the Tool:

Feedback and suggestions by experts in the field of Social Work, Law and Medicine to ensure content validity of the tool.

Pilot Testing:

Pilot testing has been carried out prior to the actual data collection. Feedback and Suggestions has been incorporated to improve the content, transition and feasibility of data collection from the respondents.

Ethical Consideration:

- Identity of Individuals has been kept confidential in the text of the final report (except party names in judicial cases as are already in public domain in reference section).
- Informed consent has been taken from the respondents prior to beginning the interaction for Data collection.
- Respondents were explained about the broad objective of the study prior to interview and were free to discontinue answering at any point of time.

Plan for Analysis:

The data collected have been tabulated in a frequency distribution table and then presented graphically. Univariate and Bivariate tables have been used to show the relationship between independent and dependent variables. Open ended questions were grouped to draw inferences.

The qualitative summary of the data collected through secondary sources supplement quantitative data. The tool was finalised after pretesting.

Limitations of the Study:

- (1) The study being self-funded has been limited to the districts Vadodara and Ahmedabad of Gujarat State.
- (2) Presence of service providers while interviewing service users and vice versa may increase the chances of coloured response from the respondents. The researcher however tried to ensure privacy in most of the interviews.

Chapterisation Plan of Research Report:

The research report has been arranged in various chapters in order to maintain a flow of concepts, understanding methods and the findings to the prospective audience. The chapters are as follows;

➤ **Chapter I- Introduction**

- Health as a Human Right
- Medical Malpractice/Negligence
- Legal Framework in India
- The Consumer Protection Law
- Crucial Issues in Medical Malpractice/Negligence

➤ **Chapter II- Review of Literature**

- Literature on Medical Malpractices and legal aspects, majorly focusing on COPRA presented thematically from medical, legal and social work perspective.

➤ **Chapter III- Research Methodology**

- Research Questions
- Objectives of the Study
- Research Design
- Universe and Sampling

- **Chapter IV- Data Analysis- Retrospective Study**
- **Chapter V- Data Analysis- Prospective Study**
- **Chapter VI- Finding, Suggestion, Conclusion**
- **Appendices**
 - Interview Schedule for Medical Service Users
 - Interview Schedule for Medical Service Providers
 - The Consumer Protection Act, 1986
 - The Consumer Protection Act, 2019

Major Findings and Discussion

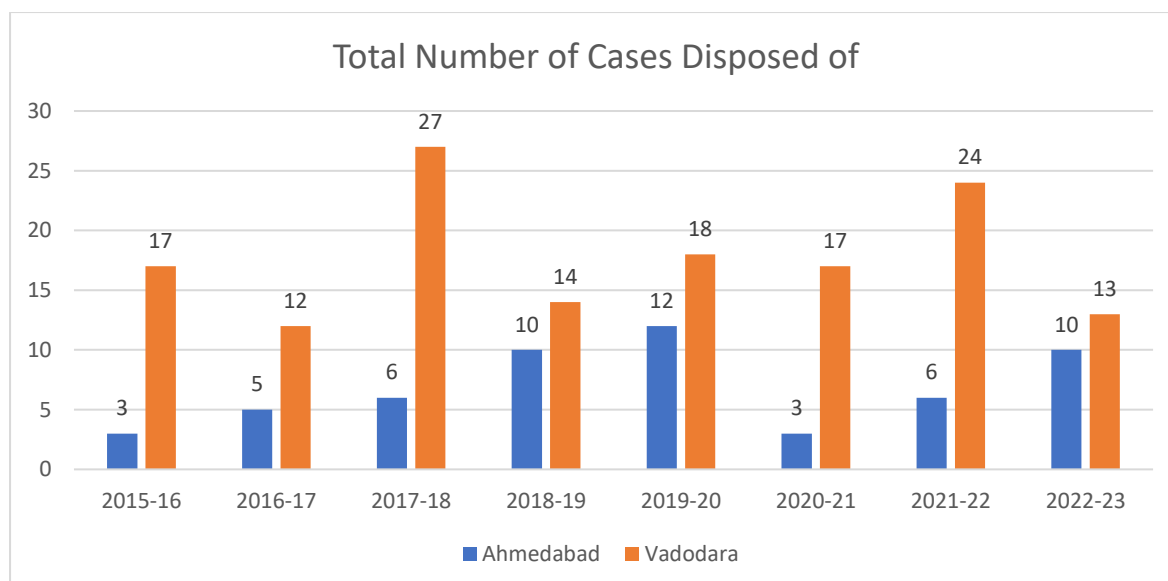
JUDGEMENTS ON MEDICAL MALPRACTICE WITH RESPECT TO COPRA: FINDINGS AND DISCUSSIONS

This section includes the analysis of the Judgements on Medical Malpractice with respect to the Consumer Protection Act. As discussed above in the methodology, this retrospective study of the cases helps understand the trends in terms of the number of judgements on Medical Malpractice, rate of conviction, Time duration for justice, types of negligence and malpractice and the basis of judgements.

For the context of selecting a sample from the judgements, Using Cluster sampling, central cluster of the Gujarat state has been chosen. Judgements related to Medical Sectors 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. However, research being progressive in nature, the judgements disposed till the time of presenting synopsis has been included. Total **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.

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

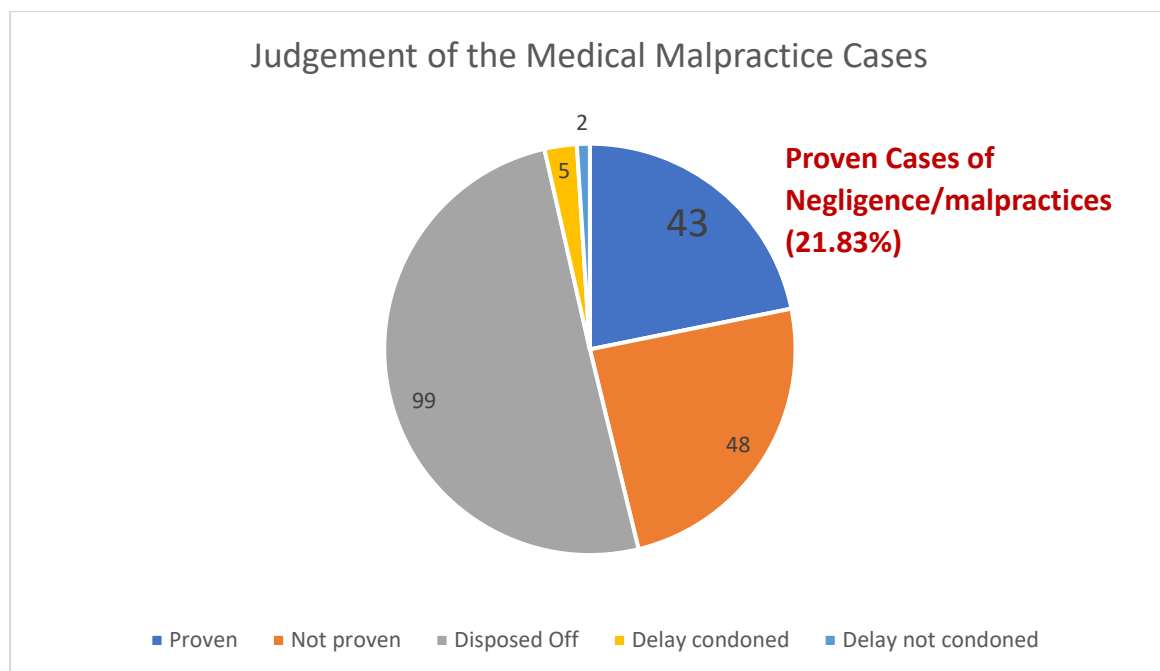
Total Number of Judgements passed from the Consumer Dispute Redressal Forums of Ahmedabad and Vadodara:



Distribution of the Cases analyzed from different Consumer Dispute Redressal Forums of Ahmedabad and Vadodara:

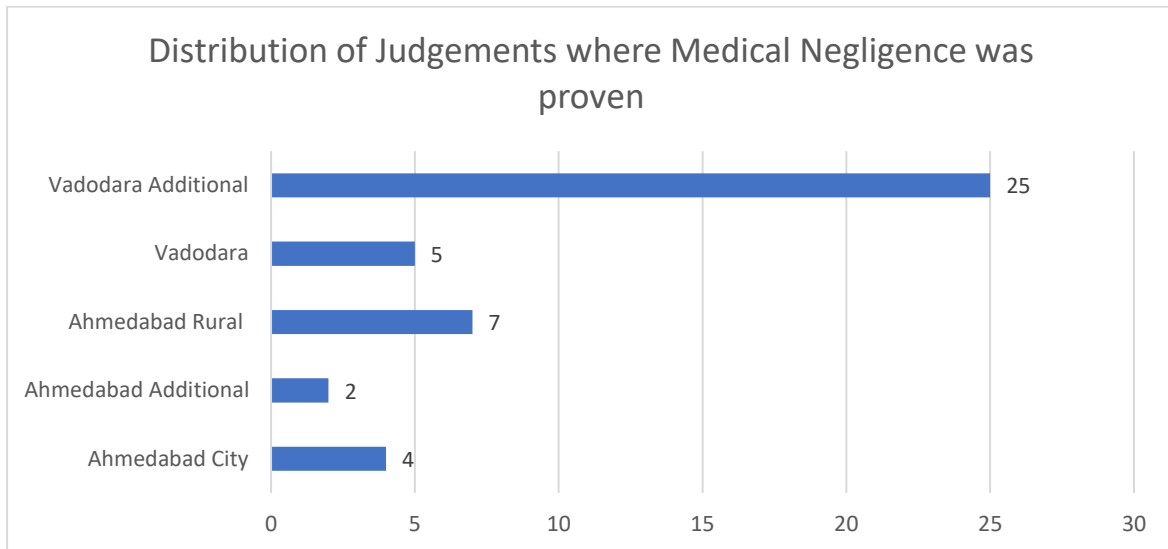
	Ahmedabad City	Ahmedabad Additional	Ahmedabad Rural	Vadodara	Vadodara Additional	Total
2015-16	0	2	1	9	8	20
2016-17	2	3	0	4	8	17
2017-18	2	0	4	6	21	33
2018-19	4	2	4	6	8	24
2019-20	4	2	6	11	7	30
2020-21	1	1	1	1	16	20
2021-22	3	0	3	1	23	30
2022-23	3	3	4	8	5	23
	19	13	23	46	96	197

Judgements of the Medical Malpractice Cases:



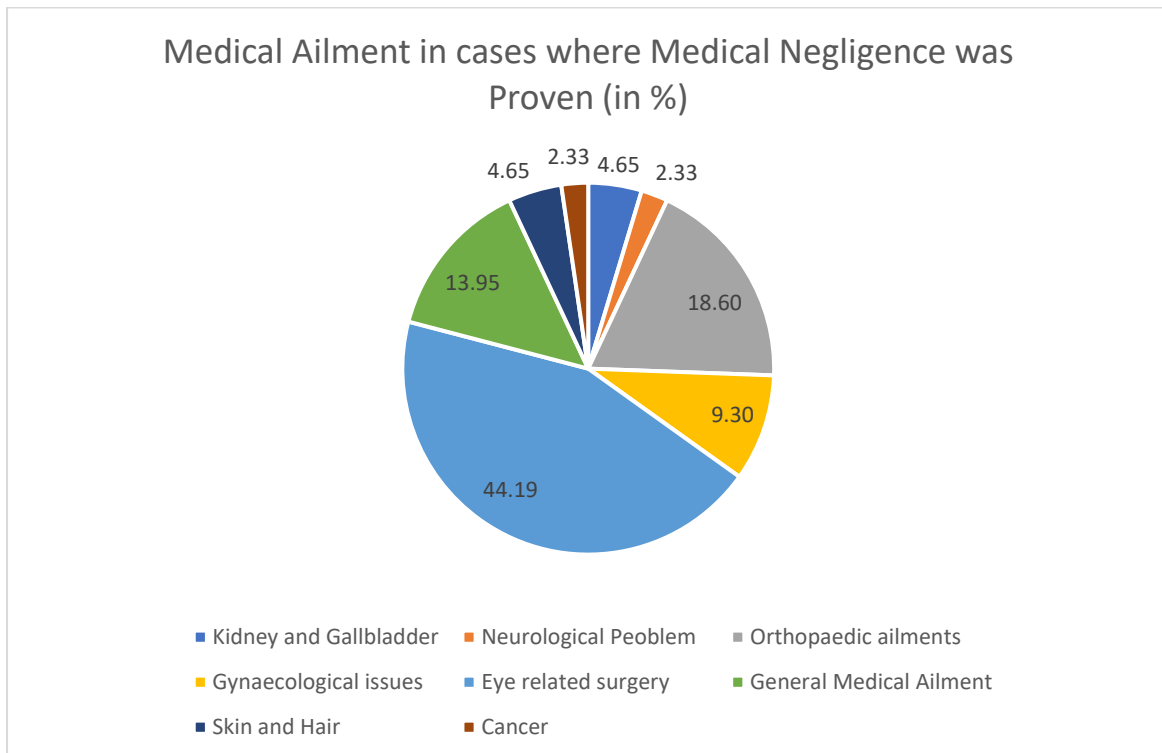
From 197 cases that were disposed from the consumer dispute redressal forums of Vadodara and Ahmedabad, in 43 cases (21.83%) the medical negligence or malpractice by the medical practitioners were proven. In 48 cases, the negligence was not proven. Almost half of the cases were disposed off either due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

Distribution of Judgements where the Medical Negligence was proven:



Majority of the cases where the medical malpractice by the medical practitioners were proven are from the Consumer Dispute Redressal Forum of Vadodara Additional.

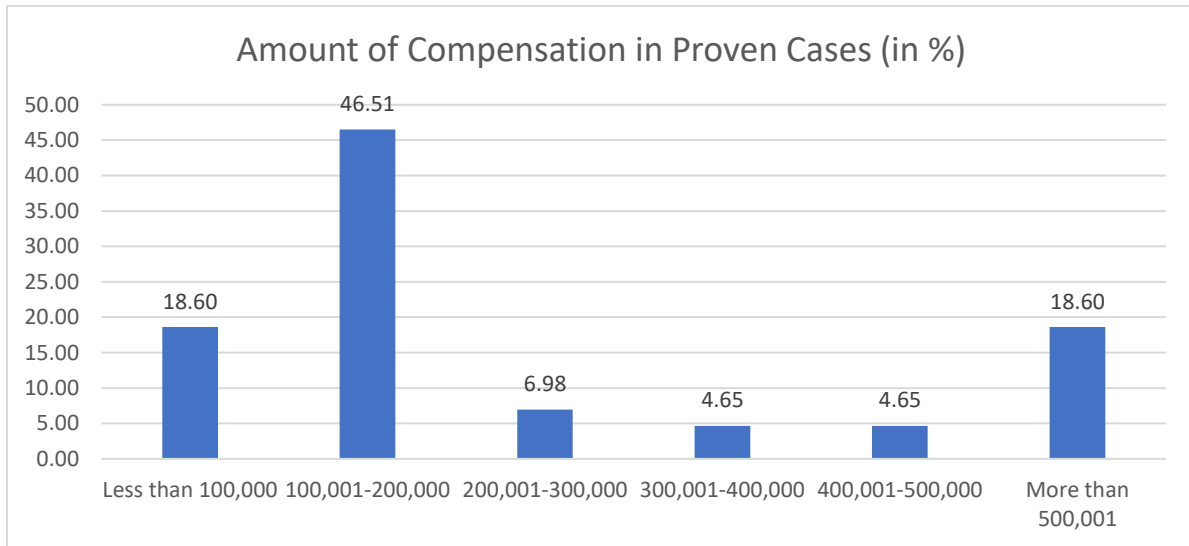
Medical Ailment in the cases where Medical Negligence or Malpractice was Proven:



Majority of the cases where the medical malpractice/negligence was proven were of the Eye related surgery (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

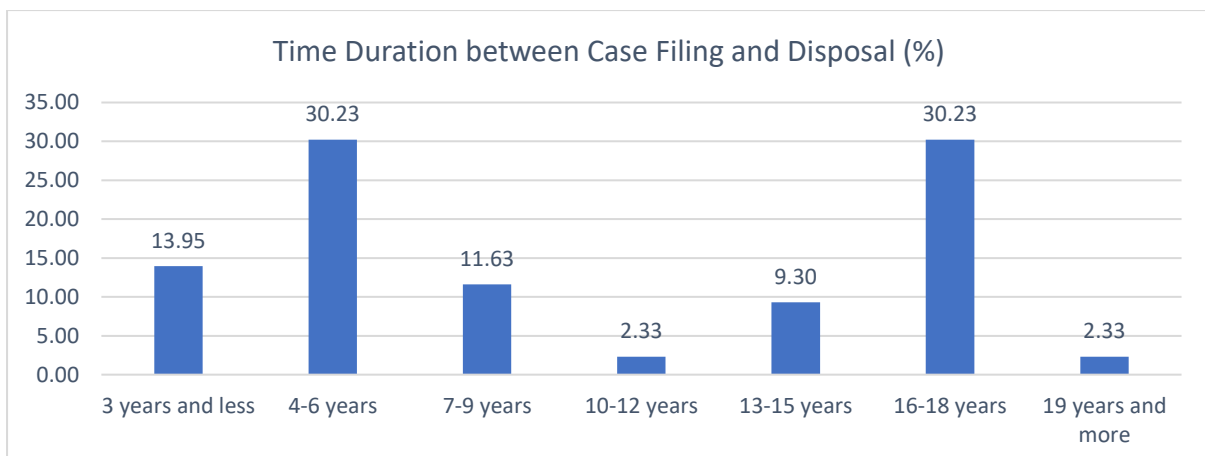
cataract surgery in one of the hospitals of Vadodara. As the complainants took help of one of the consumer organisations, they filed the case together and received the judgement together. Hence, the number of cases is higher. The cases were followed by negligence in treatment of orthopaedic, general medical ailment and gynaecological problems.

Amount of Compensation in the 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. **The average compensation from all the cases was Rs. 2,43,068.**

Time Duration between Case Filing and Disposal in Proven cases:



In the majority of the cases, the time duration between case filing and Disposal was 4-6 years and 16-18 years. However, the average time duration of justice was 7 years and 11 months in the cases where the Medical Negligence was proven.

Types of Medical Negligence/Malpractice:

Type of Negligence/Malpractice	Frequency	Percentage (%)
Negligence while performing surgery	29	67.44
Treatment by untrained Staff	19	44.19
Non-standard fixture	18	41.86
Unsterilised Equipment	17	39.53
Refuse to provide timely treatment by consulting doctors	5	11.63
Wrong treatment/Surgery	4	9.30
Unfair Trade Practice	3	6.98
Damage to organ during operation	3	6.98
Refusing to provide Case Papers	2	4.65
Delay in referral	1	2.33
Inadequate explanation by doctor	1	2.33
Not conducting preoperative care	1	2.33
Omission of important facts before treatment	1	2.33
Wrong Reports	1	2.33
Omission to administer important treatment process	1	2.33
Misbehaviour	1	2.33
Total	107	

There were cases where more than one negligence/malpractice exhibited by the medical practitioners.

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

- Res Ipsa Loquitor—the thing speaks for itself
- Expert Opinion
- Strong Arguments
- Inability of Medical Practitioner to disprove the Allegation
- Discrepancy in reply from Opponent side
- Gross Negligence
- Documents of Guarantees given by Medical Practitioner
- Evidence of treatment taken, Tests report, payment, Operation
- Vicarious Liability of Staff
- Lack of proper investigations
- Absence of Doctor at the time of Treatment
- Presenting Similar Judgements by Higher Courts

Major Findings and Discussion

PART I: MEDICAL SERVICER USERS: PATIENTS AND CAREGIVERS

For the purpose of research, Medical Service Users consist of the patients either visiting Outpatient Department or Admitted in the ward and their immediate caregivers at Civil Hospital Ahmedabad and SSG Hospital, Vadodara.

This section is divided into major 6 parts which are as following:

- Personal Background of the Respondents,
- Details of the Patients, knowledge about Rights and Duties of patients,
- Awareness about Medical Negligence/Malpractice,
- Awareness on Legal Rights of Patients as Consumers,
- Views about evidence which can help as a Valid defense against Medical Negligence/Malpractice and
- Social Workers' Role in Medical Malpractice/Negligence.

Snapshot of the Type of Respondents and Research Setting at the time of Interview:

Data Collection was conducted from **total 183 Medical Service Users**. These were divided into two categories:

- 1) Patients- **46** respondents (25.14%) and
- 2) Caregivers- **137** respondents (74.86%)

Out of all the respondents, **94** respondents (51.37%) were contacted at Civil Hospital, **Ahmedabad** and **89** respondents (48.63%) were contacted at SSG Hospital, **Vadodara**.

The setting of treatment was Outpatient Department-OPD for 99 patients (54.1%), 84 patients (45.90%) were admitted in the Ward.

Following is the brief snapshot of the respondents interviewed at different Locations.

Setting of Treatment	Civil Hospital, Ahmedabad			SSG Hospital, Vadodara		
	Patient	Caregivers	Total	Patient	Caregivers	Total
OPD	17 (9.29%)	30 (16.39%)	47 (25.68%)	25 (13.66%)	27 (14.75%)	52 (28.42%)
Ward	3 (1.64%)	44 (24.04%)	47 (25.68%)	1 (0.55%)	36 (19.67%)	37 (20.22%)
Total	20 (10.93%)	74 (40.44%)	94 (51.37%)	26 (14.21%)	63 (34.43%)	89 (48.63%)

Out of total 183 respondents, majority i.e. respondents' patients visited Cardiology (13.11%). Equal number of patients were taking treatment at Oncology department. It was followed by 15 patients (8.20%) taking treatment at Gynecology and Pediatrics departments each.

[A] Personal Background of the Respondents:

Age-wise Distribution of Respondents:

For the purpose of the research, only the patient or caregiver who have completed 18 years of age were interviewed. Out of which, majority i.e., 94 respondents (51.37%) were falling into early adulthood in age group of 18-35 years; followed by 57 respondents following in middle adulthood in the age group of 36-50 years. 26 respondents (14.21%) were from the age group of 51-65 years followed by elderly respondents of more than 66 years of age to be 6 respondents (3.28%).

Gender-wise Distribution of Respondents:

Majority i.e., 142 respondents (77.60%) were male, however, only 22.40% were female. Through observations it could be seen that generally if a male is a patient himself, he generally visits hospital by himself or accompanies other family members as a caregiver. Men being caregivers is approximately 4 times, then being patients. However, it was observed that the ratio of women being patient and caregiver was approximately equal. It again aligns with a sociological scenario in Indian context where the men are usually relied for the work outside home.

Below is the table showing gender wise distribution of Respondents between Caregivers and Patients.

Particulars	Caregivers	Patients	Total
Male	115 (62.84%)	27 (14.75%)	142 (77.6%)
Female	22 (12.02%)	19 (10.38%)	41 (22.4%)
Total	137 (74.86%)	46 (25.14%)	183 (100%)

Place of Residence of Respondents:

As the two public healthcare settings were located at the central cluster of Gujarat, more than half i.e., 100 respondents (54.64%) were belonging from Central cluster of Gujarat. Around 18.03% respondents were from the other cluster within Gujarat. Rest 50 respondents visited the institutions from outside Gujarat. Out of which, majority i.e., 35 respondents (19.13%) were from Madhya Pradesh, followed by Uttar Pradesh (3.83%), Rajasthan (3.28%), Delhi (0.55%) and Bihar (0.55%).

Type of Family:

More than half i.e., 128 respondents (69.95%) were living in a joint family system, followed by 55 respondents (30.05%) living in nuclear family.

Marital Status of Respondents:

Majority i.e., 153 respondents (83.61%) were married, followed by 23 unmarried respondents (12.57%).

Number of members in Respondents' Family:

Total 85 respondents (46.45%) mentioned that they have 5-8 members in their family, followed by 75 respondents (40.98%) who informed that they have 1-4 members in their family.

Yearly Family income of Respondents:

Public healthcare facility having an academic medical institution attached and with the government funding, are able to cater to the large spectrum of healthcare needs of large population. In addition, the treatment is available at a subsidised and affordable rate due to which it becomes accessible for economically weaker section of the society. Similar trend was showcased where more than half i.e., 123 respondents' (67.21%) family income were less than Rs. 50,000; followed by 36 respondents (19.67%) whose yearly family income were between Rs. 50,000-100,000.

Educational Status of Respondents:

Majority i.e., 57 respondents (31.15%) had completed Secondary education, followed by 50 respondents (27.32%) who completed Primary education and 30 respondents (16.39%) completing Higher Secondary Education.

Occupation of Respondents:

Majority of the respondents were skilled and self-employed i.e., 74 respondents (39.89%). This shows the inclination of rural communities towards adopting vocations for livelihood purposes. 37 respondents (20.22%) were employed and doing Job, followed by 29 respondents (15.85%) who were daily wage earners.

It is significant to note that 31 respondents (16.94%) were unemployed, 9 respondents (4.92%) and 3 respondents (1.64%) were students which means that at the time of interview, they did not have any source of income.

[B] Details of Patients:

Gender-wise Distribution of Patients:

The number of male and female patients is almost equal as there were 92 male (50.27%) and 91 female (49.73%) patients availing treatment at the public healthcare hospitals.

Age-wise Distribution of Patients:

Majority i.e., 113 patients (61.75%) were adults, followed by equal number of 35 patients (19.13%) were children and elderly each.

Mode of visiting Healthcare set-up:

The researcher asked whether the patients came/were brought to the current hospital set-up by self or were referred by any other doctor. Majority i.e., 104 patients (56.83%) visited by self, followed by 77 patients (42.08%) who visited the healthcare set-up due to referral by other doctors.

Place of Referral to current set-up:

Out of the 77 patients who were referred to the current healthcare set-up, majority i.e., 38 patients (20.77%) were referred from private hospitals and 36 patients (19.67%) were referred from other government hospitals of their domicile towns.

Economic Role of patient in the Family:

Out of all the patients, 43 patients (23.50%) were the main breadwinner of their respective families and 23 patients (12.57%) were providing supplementary financial support. Rest all the patients were financially dependent, either because of unemployment (54 patients; 29.51%), Minority (32 patients; 17.49%), old age (29 patients, 15.85%) and disability (2 patients; 1.09%).

Expenditure incurred in availing Treatment:

More than half i.e. 54.10% respondents mentioned that they have taken the treatment free of cost, whereas, 55 respondents (30.05%) shared that they have incurred partial expenses towards patients' treatment. 28 respondents (15.30%) also shared that they have incurred other expenses such as travelling, radiological tests etc and only 1 respondent (0.55%) shared that they had to pay entire expense for availing the treatment.

Time-duration of Admission in the hospital:

The respondents were asked about the time duration of hospitalisation in which majority i.e. 58 patients (31.69%) were hospitalised for less than 1 week, followed by 13 patients (7.10%) who were admitted for 1-2 weeks, 6 patients (3.28%) were admitted for 2-3 weeks and 7 patients (3.83%) were admitted for more than 3 weeks. It was noted that 99 patients (54.10%) had visited the hospital at OPD and hence, were not admitted at the time of taking interview.

Social Security Measures taken by Respondents:

When asked about the benefits of social security measures availed by the respondents, Majority i.e. 85 respondents (46.45%) shared that they have not availed any social security measures till then. Out of those who had availed the benefits, 55 respondents (30.05%) shared that they did possess Ayushman Card, followed by 46 respondents (25.14%) who shared that they had Maa Card. It was followed by other benefits such as BPL Card, Adhar card etc. availed by 5 respondents (2.73%), 1 respondent (0.55%) availing Mediclaim and covered under Employee State Insurance each.

Experiences of Treatment in current Hospital Setting:

The respondents shared both the positive and negative experiences while taking treatment in the current hospital set-up. Listing the positive experiences, majority respondents (35.52%) shared that they are getting good treatment and services followed by good behavior of doctors

and staff (15.30%), good care and response (13.66%), providing right information and guidance (11.48%), timely prescription and providing good medicines (4.37%), regular monitoring by staff (3.83%), regular visits by doctors (2.73%), better than private hospitals (2.73%), proper diagnosis (2.19%), cleanliness (1.09%) and other (1.09%).

Some respondents also mentioned about their negative experiences, where they shared about less attention and irregular check-ups by the doctors (4.92%), delay in treatment and discharge (2.73%), negligent doctors and improper care (1.64%) and other negative qualities (6.01%).

Experience of Extraordinary positive event in healthcare during lifetime:

Out of all the respondents, more than half i.e. 105 respondents (57.38%) agreed that they have experienced positive event in the healthcare setup. However, 77 respondents (42.08%) did not experience any such event and 1 respondent (0.55%) did not respond when asked.

Reasons based on the experiences of Extraordinary Positive Health experiences:

When asked in detail about the extraordinary positive health experiences, majority i.e. 52 respondents (28.42%) shared that they obtained good treatment in the current healthcare setup. It was followed by 20 respondents (10.93%) mentioning that the doctors gave new life to the patients and saved them from critical conditions. Free of cost or cheaper rate of treatment was another factor mentioned by 17 respondents (9.29%), followed by good treatment by family/known doctors at the domicile place as shared by 14 respondents (7.65%). In addition to this, few respondents also shared that the doctors and staff had provided financial/non-financial support over and above their duty (6 respondents; 3.28%) and staff helped in obtaining social security measures (2 respondents; 1.09%). 3 respondents (1.64%) shared other reasons for which they had agreed to have undergone positive experiences in the healthcare setup.

Attention had to be given that 5 respondents (2.73%) mentioned about their negative experiences. 2 respondents (1.09%) shared that, as they were visiting the hospital for the first time, they have not yet experienced such events.

[C] Knowledge of Respondents about Rights and Duties of Patients:

This section of the research includes the awareness of respondents about the rights and duties of the patients.

Inclusion of Health as a Right in Indian Constitution:

The study indicates that majority i.e. 89 respondents (48.63%) agreed that Health is considered as a Fundamental right. The respondents also shared under which Fundamental Right the Right to Health is included which were Right to Education (4.92%), Right to Life (27.32%), Right to Equality (3.83%) and all of these rights (1.64%). 20 respondents (10.93%) agreed that Health is a fundamental right but were not aware about the Right in which it was included.

36 respondents (19.67%) mentioned that right to Health is not included in the Indian Constitution and 58 respondents (31.69%) shared that they were not aware about the same.

Patients' Rights:

Majority of the respondents agreed to different rights of patients which were

- (1) Right to avail Medical Facility without discrimination based on age, caste, nationality, gender, religion etc. (152 respondents; 83.06%),
- (2) Right to Confidentiality (123 respondents; 68.85%),
- (3) Right to Informed Consent (170 respondents; 92.90%),
- (4) Right to determine whether to take or refuse treatment (169 respondents; 92.35%),
- (5) Right to seek details, indoor and outdoor case records, prescriptions, bills, receipt and other evidences of diagnosis, treatment and payment (170 respondents; 92.90%),
- (6) Right to Complaint (152 respondents; 83.06%), and
- (7) Right to Compensation (144 respondents; 78.69%).

Patients' Duties:

The percentage of respondents agreeing to different duties of the patients were slightly higher than those agreeing to the rights of the patients which can be observed from the following results.

- (1) Duty to provide complete information about your problem (178 respondents; 97.27%),

- (2) Duty to provide medical history, measures taken before medical consultation, illness, medicines, allergies etc. (178 respondents; 97.27%),
- (3) Duty to provide your knowledge of your problem and its solutions as collected from various sources like internet/friends/relatives/fellow patients etc. (173 respondents; 94.54%),
- (4) Duty to provide information about your fears of investigation/blood/surgery etc. (169 respondents; 92.35%),
- (5) Duty to seek complete clarification (176 respondents; 96.17%),
- (6) Duty of patient not to take discharge against medical advice (DAMA) (178 respondents; 97.27%), and
- (7) Duty to respect doctor or medical staff as expected from them (179 respondents; 97.81%).

[D] Awareness of Respondents about Medical Negligence/Malpractice:

This section of research shows the findings on the awareness of the respondents about Medical Negligence/Malpractice.

Treatment of Patient by another Doctor:

When asked whether the patient had taken treatment from other doctor prior to visiting the current healthcare setup to which majority i.e., 117 respondents (63.93%) agreed and 63 respondents (34.43%) disagreed. 2 respondents did not respond to it and 1 respondent was not aware about the same.

Doctor from whom the Patient had taken treatment:

Out of 117 patients who had taken treatment from other doctors before visiting current healthcare setup, majority i.e. 112 respondents (95.73%) shared that the patients had shown to other Allopathy doctors, followed by 2 patients (1.71%) visited village doctors.

Incidence of Medical Malpractice heard/known by Respondents:

The study reveals that majority i.e., 118 respondents (64.48%) had heard about the cases or incidences of medical malpractice. However, 64 respondents (34.97%) shared that they were unaware of any incidence of Medical Negligence or malpractice.

Incidences narrated by Respondents about Medical Negligence/Malpractice:

The respondents were asked to share if they could remember any incidences of medical malpractice/negligence as heard by them where they shared about the instances such as Medical Instrument left in patients body (49 respondents; 26.78%), operation conducted twice due to mistake of doctors (3 respondents; 1.64%), cutting vein or any other part by mistake (3 respondents; 1.64%), negligence/mistake in surgical procedure (2 respondents; 1.09%), not giving adequate attention, not admitting the patients and improper behaviour (2 respondents; 1.09%). 1 respondents (0.55%) each had also mentioned the incidences such as post-operative surgical process not resolved, higher doze of anaesthesia, no cleanliness, organ removal, insisting C-section delivery instead of normal delivery, prescribing many tests/investigations for obtaining commissions, admitting patients even when not necessary, conducting unnecessary surgery, overcharging patients, theft in hospital. It can be noted that 1 respondent (0.55%) shared that allegations by the patients are fake news.

16 respondents (8.74%) did not remember any specific case but heard from the news media, movies etc. 34 respondents (18.58%) did not respond to the question.

Medium of Information from where the Respondents had heard about the incidences of Medical Malpractice:

Majority i.e., 45 respondents (38.14%) shared that they heard about the incidences of Medical Malpractice from Newspaper, followed by Television (22.03%), heard from relatives (19.49%), social media (10.17%), Friends (7.63%), colleagues (4.24%) and other sources (12.71%).

Term used for such cases:

When the respondents were asked about what a term for such incidences is, majority i.e., 130 respondents (71.04%) shared that it could be called as 'Medical Negligence' and 5 respondents (2.73%) shared 'Medical Malpractice'. 30 respondents (16.39%) shared that such incidences are called 'Both' medical negligence and malpractice.

Incidence of Medical Malpractice experienced by Respondent or any other known Person:

Out of total 183 respondents, 42 respondents (22.95%) shared that either they or their known person had experienced incidence of Medical Malpractice and 139 respondents (75.96%)

shared that they had not experienced incidence of Medical Malpractice. 2 respondents did not respond to the same.

The incidences shared by the respondents were instrument left in patient's body (9 respondents; 4.92%), wrong/inadequate information (6 respondents; 3.28%), failed operation (5 respondents; 2.73%), negligence during surgical procedure (11 respondents; 6.01%), suffering due to negligence by doctor (3 respondents; 1.64%), recommending or doing a particular treatment to charge more from patient and family (3 respondents; 1.64%), refusing or delay in operation (2 respondents; 1.09%), stiches opened, taking consent before realizing the mistake by doctor, lack of care in absence of influence, negligence in pre-operative care, death of patient due to administrative failure, overcharging from patients, administrative hurdles were also shared by 1 respondent (0.55%) each.

Meaning of term Medical Malpractice:

6.56% respondents mentioned that 'mistake by doctor while providing treatment with or without intention' and 7.10% respondent shared that 'breach of duty by a doctor to his patients to exercise reasonable skill and care resulting in some physical, mental or financial disability' are the meaning of Medical Malpractice. However, approximately 3/4th respondents i.e., 75.96% shared that both the statements are true for the term Medical Malpractice.

13 respondents i.e., 7.10% shared that none of the statements were the meaning of medical malpractice. However, 6 respondents (3.28%) were not aware about the same.

Knowledge of Respondents about Medical Negligence/Medical Malpractice:

Sr. No.	Statement	Agree	Disagree	Not sure	No Response
1	Related to Medical Negligence				
1.1	Error of judgement in Diagnosis	148 (80.87%)	20 (10.93%)	14 (7.65%)	1 (0.55%)
1.2	Choosing wrong treatment after diagnosis	162 (88.52%)	13 (7.10%)	7 (3.83%)	1 (0.55%)
1.3	Mistake while performing surgery	159 (86.89%)	13 (7.10%)	10 (5.46%)	1 (0.55%)
1.4	Before surgery, error in providing or administering anaesthesia	152 (83.06%)	20 (10.93%)	10 (5.46%)	1 (0.55%)

1.5	Failure to attend the patient at the time of emergency	149 (81.42%)	22 (12.02%)	11 (6.01%)	1 (0.55%)
1.6	Injection and vein puncture hazards due to substandard care	152 (83.06%)	21 (11.48%)	9 (4.92%)	1 (0.55%)
1.7	Leaving surgical instrument in patient's body after operation.	163 (89.07%)	11 (6.01%)	8 (4.37%)	1 (0.55%)
1.8	Blood Transfusion errors/hazard/ reaction	158 (86.34%)	16 (8.74%)	8 (4.37%)	1 (0.55%)
1.9	Failure or inaccuracy in maintaining medical records such as clinical findings, diagnostic test results, preoperative care, operation and post operation notes etc.	160 (87.43%)	16 (8.74%)	6 (3.28%)	1 (0.55%)
2	Related to Medical Malpractice				
2.1	Conducting unnecessary surgery	159 (86.89%)	18 (9.84%)	5 (2.73%)	1 (0.55%)
2.2	Not taking informed consent from patient before surgery	161 (87.98%)	16 (8.74%)	5 (2.73%)	1 (0.55%)
2.3	Treating patient without required medical qualification	164 (89.62%)	13 (7.10%)	5 (2.73%)	1 (0.55%)
2.4	Not observing the provisions of Medical Legislations	164 (89.62%)	12 (6.56%)	6 (3.28%)	1 (0.55%)
2.5	Doing advertisement/publicity through any mode as to invite attention to him or to his professional position/skill etc.	131 (71.58%)	39 (21.31%)	12 (6.56%)	1 (0.55%)
2.6	Giving approval/recommendation/ endorsement/certificate/report with respect to any drug, medicine, surgical, therapeutic	126 (68.85%)	45 (24.59%)	11 (6.01%)	1 (0.55%)

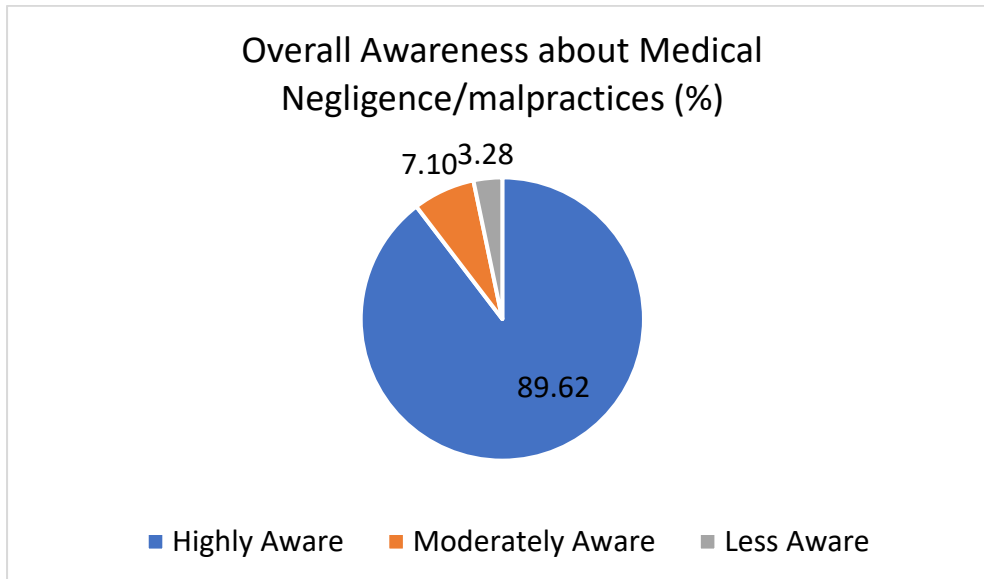
	article, apparatus with respect to quality and its use				
2.7	Withdrawing the case without giving proper notice to the patient and family	158 (86.34%)	14 (7.65%)	10 (5.46%)	1 (0.55%)
2.8	Making false or misleading representation concerning the need or usefulness of treatment.	158 (86.34%)	15 (8.20%)	9 (4.92%)	1 (0.55%)
2.9	Employing attendant neither registered nor enlisted under medical acts in force and permit such person to attend, treat or perform operation of patients wherever skills are required.	158 (86.34%)	14 (7.65%)	10 (5.46%)	1 (0.55%)
2.10	Refusing to provide case papers, bills	157 (85.79%)	17 (9.29%)	8 (4.37%)	1 (0.55%)
2.11	Physician running an open shop for sale of medicine for dispensing prescriptions prescribed by other doctors or for sale of surgical appliances.	149 (81.42%)	24 (13.11%)	9 (4.92%)	1 (0.55%)
3	Doctor/Nurse/hospital management staff, all can be legally liable in the cases of medical negligence/malpractice	152 (83.06%)	20 (10.93%)	10 (5.46%)	1 (0.55%)

It can be observed from the above table that, approximately more than 3/4th respondents agreed to different instances to be considered as Medical Negligence/Malpractice. Only in the incidence where it was mentioned that advertise done by medical practitioner to invite attention to him/his professional practice and recommendations/approval/endorsements by medical practitioner, slightly less than 3/4th respondents agreed to the same.

Approximately 5-15% of the respondents were disagreeing to the statements of incidence whether they could be considered as Medical Negligence/Malpractice. As above, in the

incidence where it was mentioned that advertise done by medical practitioner to invite attention to him/his professional practice and recommendations/approval/endorsements by medical practitioner to be considered as Medical Negligence/Malpractice, more than 1/5th respondents disagreed for the same.

Overall Awareness about Medical Negligence/Malpractice (%):



Most of the respondents (89.62%) were highly aware about the incidence of Medical Negligence/Malpractice. 7.10% were moderately aware and 3.28% were less aware about the same.

Reaction of Medical Service Users in case of Medical Malpractice/Negligence:

When asked about how the respondent would react if they got to know if incident of Medical Malpractice/Negligence occurred to themselves or any of their family members, they came up thinking diverse reactions. Majority i.e., 57 respondents (31.15%) mentioned that they would proceed for police complaint and resort to legal process. 52 respondents (28.42%) shared that they would inform, take advice and complaint to the treating doctor first, followed by 27 respondents (14.75%) mentioning that they would file complaint but not specified where.

Other reactions mentioned by the respondents were taking patient to other doctor/hospital (7.10%), complaint to higher authority (6.01%), approaching Consumer Protection Authority (5.46%), taking advice from elders, relatives and friends (3.28%), feeling angry (1.64%), resort to physical violence (1.09%), complaint to health ministry (1.09%), obtaining help from CM Helpline/government schemes (1.09%) , difficulty in comprehending about the situation

(1.09%), engaging media (0.55%), feeling bad about situation (0.55%), fear of complaint in anticipation of worsening treatment (0.55%) and taking action (0.55%).

14 respondents (7.65%) shared that they would not and cannot take action in such cases. 2.73% did not share reaction as they had not experienced incident of medical malpractice/negligence. 4 respondents (2.19%) mentioned that doctors do not make mistake and 1 respondent shared that they had positive experience in the hospital.

[E] Awareness of Respondents on Law/Legal Rights of Consumers:

This section of the findings includes the awareness of respondents on Law and legal rights of Consumer. It also assesses the awareness of respondents about the Consumer Protection Law.

Complaint in the cases of Medical Negligence/Malpractice:

More than 4/5th respondents i.e. 87.43% respondents agreed that the patient or immediate family member can formally complain in the cases of Medical Negligence/Malpractice. 22 respondents i.e., 12.02% mentioned that complaint cannot be filed in such cases.

Place of Complaint:

When the respondents were asked where a complaint of Medical Malpractice or Negligence can be filed, majority i.e., 67 respondents (36.61%) shared that the complaint can be filed at Criminal, Civil and Consumer Forum - all the places. It was followed by 47 respondents (25.68%) mentioning that it can be filed at Consumer Forum. 17 respondents (9.29%) shared that the complaint can be filed at civil court, followed by 6 respondents (3.28%) mentioning the place of complaint to be Criminal Court. 10 respondents mentioned that police complaint can be filed.

It was found out that 18 respondents (9.84%) mentioned that the complaint cannot be filed in such cases and 20 respondents were not aware about the same.

Knowledge of person filing complaint of Medical Malpractice/Negligence:

Out of all the respondents more than 3/4th respondents i.e., 154 respondent (84.15%) did not know anyone filing a complaint of medical malpractice. 28 respondents (15.30%) mentioned that they know the case where medical malpractice/negligence was filed by someone.

Incident where the respondent or any known person filed case of Medical Malpractice:

While 154 respondents (84.15%) did not know about any such case, 28 other respondents did mention the incidences where the case of medical negligence/malpractice was filed. 7 respondents (3.83%) shared that they knew about the case but did not specify about the incident. Negligence during or failure of surgical process (6 respondents;3.28%), overcharging or not returning deposit money (2 respondents; 1.09%), death due to negligence (2 respondents; 1.09%), paying compensation to patients (2 respondents; 1.09%) were the cases shared by the respondents. The other incidents shared by 1 respondent (0.55%) each are treatment by unqualified doctor, wrong advice by doctor, compelling patient/caregiver to purchase medicine from particular hospital for commission, death due to oxygen for other tests, death of critical patient due to power cut, negligence in pre-dialysis care, insisting C-section delivery, hospital keeping dead patient for overcharging, handing over the dead body during COVID without informing family of patient, doctor suspended, hospital sealed. 1 respondent (0.55%) also shared that doctor filed the case on patient. No response was received by one respondent.

Knowledge about the case where Compensation was paid to patients:

More than half i.e., 126 respondents (68.85%) shared that they did not know about any case where the compensation was paid by the medical practitioner/hospital to the patient. However, 56 respondents (30.60%) shared that they were aware about the case where patients were compensated.

Medium of Information about the incident of compensation being paid to patients:

When the respondents were asked about the medium through which they received an information about the compensation being paid to the patients, majority i.e., 23 respondents (12.57%) shared that they received information from newspaper. Television was another medium of information for 16 respondents (8.74%). Friends and relatives were the medium for 13 respondents (7.10%) and 6 respondents (3.28%) personally experienced the incident.

Awareness about the Consumer Protection Law:

When asked about whether the respondent know about the consumer protection law, the study revealed the ratio of awareness and non-awareness to be 1:1. Half of the respondents i.e., 92 respondents (50.27%) shared that they knew about the Consumer Protection Law and 90 respondents (49.18%) mentioned they did not know about the same. 1 respondent did not respond.

Awareness of the Year of Enactment of the Consumer Protection Act (COPRA):

Out of all the respondents, 7 respondents (3.83%) knew the correct year of enactment of Consumer Protection Act. Rest of the respondents mentioned 1980 (4 respondents; 2.19%), 1995 (4 respondents; 2.19%) and 2001 (8 respondents; 4.37%). 159 respondents (86.89%) respondents shared that they were not aware about the same.

Awareness of the Year of recent Amendment in COPRA:

More than 90% respondents i.e., 168 respondents were not aware about the year of amendment. However, 5 respondents (2.73%) shared the correct year of amendment in COPRA to be 2019.

Respondents' awareness on Objectives of COPRA:

The objective of COPRA is to protect the right of consumers was shared by 7 respondents (3.83%). 3 respondents (1.64%) mentioned the objective to safeguard consumer against different types of exploitation such as defective goods, deficient services and unfair trade practices; and to provide simple, speedy and inexpensive machinery for redressal of consumer's grievances each.

More than half i.e., 128 respondents (69.95%) shared that all three of the above were the objectives of COPRA. 1/4th respondents i.e., 46 respondents (25.14%) were not aware about the same.

Medical Facility to be considered as 'Service' under COPRA:

Majority i.e., 151 respondents (82.51%) agreed that obtaining medical facility is considered as availing 'service' under the Consumer Protection Act, 7 respondents (3.83%) disagreed to the same. 24 respondents (13.11%) were not aware about the same.

Patient to be considered as 'Consumer' of Medical Field:

More than 3/4th i.e., 148 respondents (80.87%) agreed that the patient is considered as 'Consumer' of Medical Field and 16 respondents (8.74%) disagreed. 18 respondents shared that they were not sure whether patient can be considered as Consumer or not.

COPRA restoring Justice to victims of Medical Negligence:

When asked whether the Consumer Protection Act is a machinery where justice to the victims of medical negligence can be restored to which majority i.e., 141 respondents (77.05%) agreed and 9 respondents (4.92%) disagreed. 32 respondents (17.49%) were not aware about the same.

Complainant in the cases of Medical Negligence:

A multiple response question was asked to the respondent on who can file a complaint in the cases of medical negligence where the following responses were given by the respondents- Patient (26 respondents; 14.21%), family members of patient (56 respondents; 30.60%), more than one patient having same interest collectively (47 respondents; 25.68%), voluntary consumer association (47 respondents; 25.68%), central government or state government (27 respondents; 14.75%), Central Authority of COPRA (26 respondents; 14.21%) and all of the above (99 respondents; 54.10%).

5 respondents (2.73%) shared that complaint cannot be filed by any of the above and 19 respondents (10.38%) were not aware about the same.

Complainant in case of Minor Patient:

Out of all the respondents, when asked who can file complaint in the case of Minor patient to which 52 respondents (28.42%) mentioned 'Parents', 3 respondents (1.64%) shared 'guardian' and total 103 respondents (56.28%) told that either of these can file complaint.

5 respondents (2.73%) shared that in case if the patient is minor, complaint cannot be filed. 19 respondents were not aware about the same.

Complainant in case if the patient is Mentally Unsound:

Approximately 1/4th i.e., 49 respondents (26.78%) mentioned 'Parents', 4 respondents (2.19%) mentioned 'Guardian' and 103 respondents (56.28%) shared either of these can file complaint if the patient is mentally unsound. 6 respondents shared that the complaint cannot be filed, and 20 respondents (10.93%) shared that they were not aware about the same.

Legal Representative to complain in case of Death of Patient due to Medical Negligence:

Majority respondents i.e., 157 respondents (85.79%) agreed that the legal heir/legal representatives can file complaint in the cases of death of patient due to negligence and 4 respondents (2.19%) disagreed to the same. 21 respondents (11.48%) were not aware about the same.

Whom to approach if the patient doesn't have enough means to file complaint:

A multi-response question was asked to the respondents that who can be approached if the patient does not have enough means (resources) to file the complaint to which majority i.e., 75

respondents (40.98%) mentioned 'Legal Aid Services', 61 respondents (33.33%) shared 'concerned Voluntary Organization', 21 respondents (11.48%) shared that any well wisher can be approached. 16 respondents (8.74%) shared that complainant can do legal process by himself/herself. All of the above resources can be approached were mentioned by 6 respondents (3.28%).

31 respondents (16.94%) shared that they were not aware about the same and 2 respondents mentioned that the complaint cannot be filed.

Form of Making a Complaint:

Majority of the respondents i.e., 123 respondents (67.21%) shared that written complaint shall be filed and 15 respondents (8.20%) mentioned verbal complaint is suffice. 17 respondents (9.29%) mentioned that both written and verbal complaint can be filed. 27 respondents (14.75%) were not aware about the same.

Complaint against pharmaceutical dealer for selling unsafe drugs without prescription:

When the respondents were asked whether a complain can be filed against pharmaceutical dealer for selling unsafe drugs without prescription, to which 151 respondents (82.51%) shared correctly that complaint can be filed. However, 6 respondents (3.28%) disagreed. 25 respondents (13.66%) were not aware about the same.

Meaning of 'Consumer Dispute':

43 respondents i.e. 23.50% were aware about the true meaning of 'Consumer Dispute' in context of medical malpractice/negligence to be 'when a patient/immediate caregiver files a complaint and medical service provider denies the allegation contained in the complaint'.

However, 54 respondents (29.51%) shared 'when a patient/immediate caregiver alleges medical service provider for indulging medical malpractice' to be 'Consumer Dispute'.

Majority of the respondents (85 respondents; 46.45%) mentioned both are the meaning of the same.

Rights of Patients as Consumers:

The respondents were asked about the rights of patients as consumers where they mentioned following rights- Right to be protected against hazardous goods or services (6 respondents; 3.28%), Right to be informed about details of the treatment (8 respondents; 4.37%), Right to

be assured and have access to treatment (9 respondents; 4.92%), Right to be heard (7 respondents; 3.83%), Right to seek redressal (7 respondents; 3.83%), Right to consumer awareness (7 respondents; 3.83%) and all of the above (147 respondents; 80.33%). 26 respondents (14.21%) were not aware about the same.

‘Deficiency’ in Medical Services:

‘Any act of negligence by knowingly or unknowingly by any such person which causes loss or injury to the consumer’ is considered as ‘deficiency’ in medical services was agreed by 4 respondents (2.19%). Same number of respondents agreed to ‘deliberate withholding of relevant information by such person to be the consumer’ was a deficiency. Majority i.e. 134 respondents (73.22%) agreed to the both the incidents.

9 respondents shared that none of the above were considered as deficiency in medical services and 31 respondents (16.94%) were not aware about the same.

‘Harm’ in relation to product liability:

According to Consumer Protection Act and in context of medical malpractice, 3 respondents (1.64%) shared Personal injury, illness or death and 2 respondents (1.09%) shared mental agony, trauma, or emotional distress owing to personal injury and both (148 respondents; 80.87%) were considered as ‘Harm’ in relation to product liability. 29 respondents (15.85%) were not aware about the same.

Mental Harm to be considered along with Physical Harm as ‘Injury’ with respect to COPRA:

Most of the respondents i.e., 151 respondents (82.51%) knew that mental harm is considered along with physical harm as ‘injury’ with respect to COPRA. 3 respondents (1.64%) disagreed to it and 28 respondents (15.30%) were not aware whether mental harm is considered as injury or not.

‘Unfair Trade Practices’ with respect to Medical Services:

Most of the respondents i.e., 152 respondents (83.06%) agreed to following practices were ‘unfair trade practices’- (1) Not issuing bill or cash memo or receipt for medical services rendered, (2) non-compliance with prescribed standards by pharmaceutical industry, (3) providing drug/medicine without prescription where it is necessary and (4) doctor selling

sample medicine to patients. 27 respondents (14.75%) were not aware about the unfair trade practices.

Time-bar for filing Complaint in Consumer Forum:

Out of all the respondents, only 2 respondents (1.09%) were aware that the complaint of medical malpractice/negligence can be filed within 2 years of the incident. Majority i.e., 84 respondents (45.90%) and 52 respondents (28.42%) shared that complaint can be filed within 1 years and immediately respectively. 44 respondents (24.04%) were not aware about the time-bar for filing complaint.

Complaint when Medical Services are availed free of cost:

8 respondents (4.37%) knew correctly that when the free of cost treatment is availed, complaint for medical malpractice can be filed at Civil Court. Majority i.e., 119 respondents (65.03%) shared that complaint can be made at COPRA and 20 respondents (10.93%) shared that complaint cannot be filed. 35 respondents (19.13%) mentioned that they were not aware about whether complaint can be filed when medical services are availed free of cost.

Punishment under COPRA if medical malpractice/negligence by the medical practitioner is proven:

Less than 1/5th i.e., 29 respondents (15.85%) correctly shared that if negligence/malpractice by the medical practitioner is proven, he/she can be punished by order of paying compensation for the loss or injury suffered or reimbursement of damage. Rest of the punishment as agreed by respondents were imprisonment (18 respondents; 9.84%), fine (25 respondents; 13.66%), discontinue providing medical services (49 respondents; 26.78%), all of the above (8 respondents; 4.37%), any of the above (36 respondents; 19.67%), and not aware (38 respondents, 20.77%).

Time Duration for appeal from District to State Consumer Forum:

The study findings showed that only 10 respondents (5.46%) knew that correct time duration for appeal to be 45 days. Majority i.e., 97 respondents (53.01%) shared this time duration to be 30 days, 8 respondents (4.37%) mentioned 60 days and 13 respondents (7.10%) shared it to be 90 days. 54 respondents (29.51%) were not aware about the same.

Time Duration for appeal from State to Central Forum:

In contrast to the above question, majority i.e., 85 respondents (46.45%) mentioned the correct time duration for appeal from state to central forum to be 30 days. 45 days, 60 days and 90 days were the other time duration agreed by 16 respondents (8.74%), 10 respondents (5.46%) and 15 respondents (8.20%) respectively. 56 respondents (30.60%) were not aware about the same.

Measures taken under COPRA in case of Contempt of court by medical service provider:

‘Imprisonment’ as a measure in case of contempt of court was agreed by 31 respondents (16.94%), and ‘fine’ was agreed by 8 respondents (4.37%). 49 respondents (26.78%) shared that both measures can be taken.

1/4th i.e., 46 respondents (25.14%) correctly shared that either imprisonment or fine or both can be ordered in case of contempt of court. While 43 respondents (23.50%), were not aware about any measure, 5 respondents (2.73%) stated that none of the measures can be taken in case of contempt of court order.

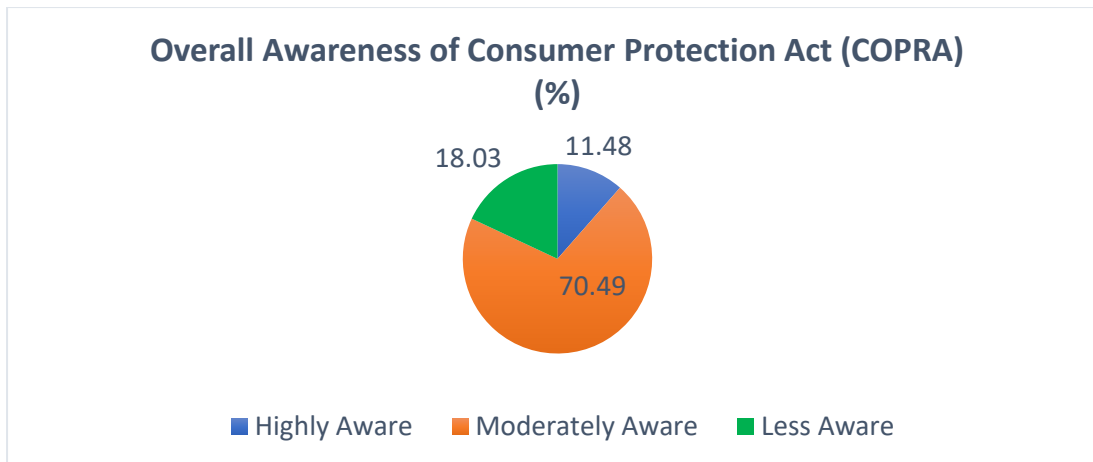
Responsibility of producing evidence in complaint of Medical Malpractice:

Majority i.e., 125 respondents (68.31%) rightly said that the burden of proof in the complaint of medical malpractice lies with the patients/caregivers, while only 15 respondents (8.20%) and 7 respondents (3.83%) mentioned that it lies with medical practitioner and both respectively. 19.13% were not aware about it.

Cell for the Mediation of the Case:

The respondents were asked about the cell that is attached with each district and state commission for the mediation of Consumer Grievances to which, less than 1/10th i.e., 16 respondents correctly stated it to be ‘Consumer Mediation Cell’. Other respondents shared it to be ‘Consumer Settlement Cell’ (23 respondents; 12.57%) and ‘Consumer Redressal Cell’ (40 respondents; 21.86%). More than half i.e., 103 respondents (56.28%) stated that they were not aware about the name of such cell for the mediation of Consumer Grievances.

Overall Awareness of Respondents on the Consumer Protection Act:



Based on the analysis of the correct responses by the respondents on the Awareness of the Consumer Protection Law, the study revealed that majority i.e., 129 respondents (70.49%) were ‘moderately aware’ about COPRA. It was followed by 33 respondents (18.03%) who were ‘less aware’ and 21 respondents (11.48%) were ‘highly aware’ about COPRA.

[F] Views of Respondents about Evidences which can help as a Valid Defense against Medical Negligence/Malpractice:

In this section, the respondents were informed about different evidence in context to Medical practice and they had to agree/disagree to whether the evidence can help the complainant to serve as a valid defense against Medical Negligence or Malpractice.

Qualified Expert’s Opinion:

Majority of the respondents (144 respondents; 78.69%) agreed that if the qualified expert’s opinion is sought for proving medical malpractice, it can help the complainant. 26 respondents (14.21%) mentioned that they were not sure about it and 12 respondents (6.56%) disagreed for qualified expert’s opinion to be helpful to complainant.

Written Records:

Majority of the respondents (154 respondents; 84.15%) agreed that written records of diagnosis, treatment, and payment can serve as a valid defense, whereas, 22 respondents (12.02%) and 6 respondents (3.28%) were not sure and disagreed to the same respectively.

Adopting more than one method or multiple laboratory tests for Diagnosis of Medical Ailment:

Majority of the respondents (137 respondents; 74.86%) agreed, 32 respondents (17.49%) were not sure and 13 respondents (7.10%) disagreed that adopting more than one method or multiple laboratory tests for the diagnosis of medical ailment can be useful evidence for the complainant. It is important to note here that, by adopting more than one method, the medical practitioner exercises more diligence in proper diagnosis of the medical ailment which may not serve as a valid defence for the complainant.

Medical Practitioner taking necessary precautions:

There was a mixed response received from the respondents wherein 77 respondents (42.08%) agreed, 26 respondents (14.21%) were not sure and 79 respondents (43.17%) disagreed that when medical practitioner takes necessary precautions, it serves as a valid defence for the complainant. However, 'breach of duty of care' is one of the essential element to prove medical negligence. If medical practitioner takes necessary precautions while treating the patient, any adverse event cannot be considered as a medical negligence or malpractice.

Patient/Caregivers have given consent despite mentioning possible mishap:

It was revealed from the finding that majority of the respondents (107 respondents; 58.47%) mentioned that if the patient or family members have given consent despite mentioning the possible mishap, it cannot serve as evidence favouring the complainant. 47 respondents (25.68%) agreed to it and 28 respondents (15.30%) were not sure whether it is an evidence or not.

Putting forth strong arguments or evidence to prove/disprove medical negligence/malpractice:

Majority i.e., 124 respondents (67.76%) agreed that putting forth strong arguments or evidence to prove or disprove medical negligence or malpractice serve as valid evidence. However, 30 respondents (16.39%) were not sure and 28 respondents (15.30%) disagreed to the same.

Undue delay beyond prescribed time bar in filing the complaint with valid reasons can be condoned by the consumer Forum:

Majority i.e., 109 respondents (59.56%) agreed, 38 respondents (20.77%) disagreed and 35 respondents (19.13%) were not sure that undue delay beyond prescribed time bar in filing the complaint with valid reasons can be condoned by the consumer forums.

Effects of Incident of Medical Malpractice on patient and the caregivers:

An open ended question asking about the effect of the incident of medical malpractice on patient and the caregivers was asked to the respondents. Majority i.e., 67 respondents (36.61%) mentioned that it has negative impacts but did not specify any particular effect. It was followed by 34 respondents (18.58%) mentioning ‘Psychological Impacts’ and ‘Emotional Impacts’ each. 32 respondents (17.49%) shared that it creates ‘financial impacts’ on the family where the patient who has suffered from medical malpractice is main or important breadwinner for the family.

16 respondents (8.74%) shared that it impacts the family as a whole. 13 respondents (7.10%) mentioned about the ‘physical impacts.’ The other impacts that were shared by the respondents were filing case to obtain justice (11 respondents; 6.01%), difficulty in acceptance of situation/helplessness (8 respondents; 4.37%), reduces/breaches the trust on medical practitioner or hospital (5 respondents; 2.73%), Social Impacts (2 respondents; 1.09%), tendency of leaving a situation on luck (1 respondent; 0.55%), seeking elders’ advice (1 respondent; 0.55%), time consuming process (1 respondent; 0.55%) and regret for being uneducated (1 respondent; 0.55%).

2 respondents (1.09%) respondents mentioned that the medical malpractice does not affect the patient or the family. 15 respondents (8.20%) were not aware about the same and 8 respondents (4.37%) did not give any response for the same.

[G] Opinion of Respondents about Social Workers’ Role in Medical Malpractice/Negligence:

This was the last section of the interview schedule where the respondents were asked about their views about the role of social workers in Medical Malpractice/Negligence.

Role of Social Workers in the cases of Medical Negligence/Malpractice:

When the respondents were asked whether the social workers can play important role in the prevention of medical malpractice and negligence and the restoration of justice where most i.e., 158 respondents (86.34%) replied affirmatively. 12 respondents (6.56%) shared that social workers does not have any role to play in medical malpractice. 10 respondents (5.46%) shared that they were not aware about it and 3 respondents (1.64%) did not respond.

Expectations of respondents for Contribution of Social Workers in Medical Negligence/Malpractice:

When asked about the respondents' expectations about the contribution of social workers in Medical Negligence/Malpractice, majority i.e., 73 respondents (39.89%) told that the social workers can take action and help the victims. 31 respondents (16.94%) mentioned that they can provide information and guidance. 25 respondents (13.66%) shared that the social workers can help in the legal process for obtaining justice and compensation.

The other roles as shared by the respondents were advocacy and becoming voice for Patients and Families (15 respondents; 8.20%), spread awareness on Patients' rights and redressal systems (14 respondents; 7.65%), enquire, understand and investigate the case (12 respondents; 6.56%), suggest further steps (7 respondents; 3.83%), take action against medical malpractice (7 respondents; 3.83%), Use of media including social media (6 respondents; 3.38%), resource mobilisation (4 respondents; 2.19%), help in maintaining transparency in treatment process (3 respondents; 1.64%), support in obtaining treatment required for victim (3 respondents; 1.64%), conducting campaigns and strikes (3 respondents; 1.64%), partial help (3 respondents; 1.64%), taking precautions against medical malpractice (2 respondents; 1.09%), formation of support groups (2 respondents; 1.09%), depends on victim's socio-economic conditions (2 respondents; 1.09%). Other roles are as follows that were shared by 1 respondent (0.55%) each that are save life, serve as a witness, economic assistance, write a book on the topic, labour work, institutional support and multisectoral efforts.

One of the respondents shared that they haven't received any help from social workers yet. 7 respondents (3.83%) were not aware about the same. 11 respondents (6.01%) did not respond and for 11 respondents (6.01%) it was not applicable.

Major Findings and Discussion

PART II: MEDICAL SERVICER PROVIDERS

For the purpose of research, Medical Service Providers consists of Medical Practitioners and Interns providing their services in the Civil Hospital Campus, Ahmedabad and SSG Hospital, Vadodara.

This section is divided into major 6 parts which are as following:

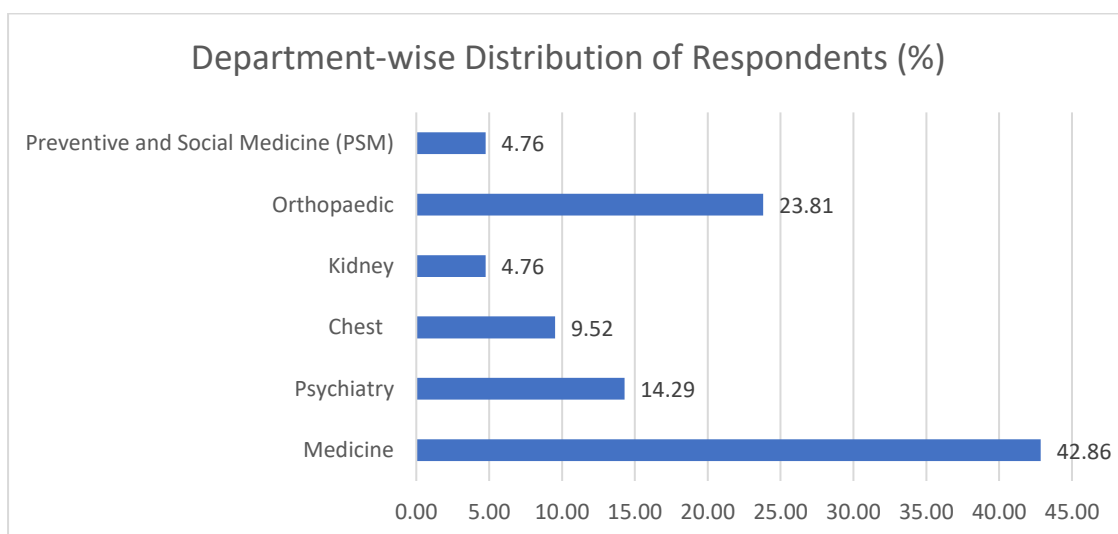
- Personal Background of the Respondents,
- Details of the Patients, knowledge about Rights and Duties of patients,
- Awareness about Medical Negligence/Malpractice,
- Awareness on Legal Rights of Patients as Consumers,
- Views about evidence which can help as a Valid defense against Medical Negligence/Malpractice and
- Social Workers' Role in Medical Malpractice/Negligence.

Snapshot of Type of Respondents and Research Setting at the time of Interview:

Interviews on the topic of research was conducted with **total 21 Medical Service Users**. Out of which **14 (66.67%)** medical service users were providing their services at SSG hospital, Vadodara and **7 (33.33%)** were performing their duty at Civil Hospital Campus, Ahmedabad.

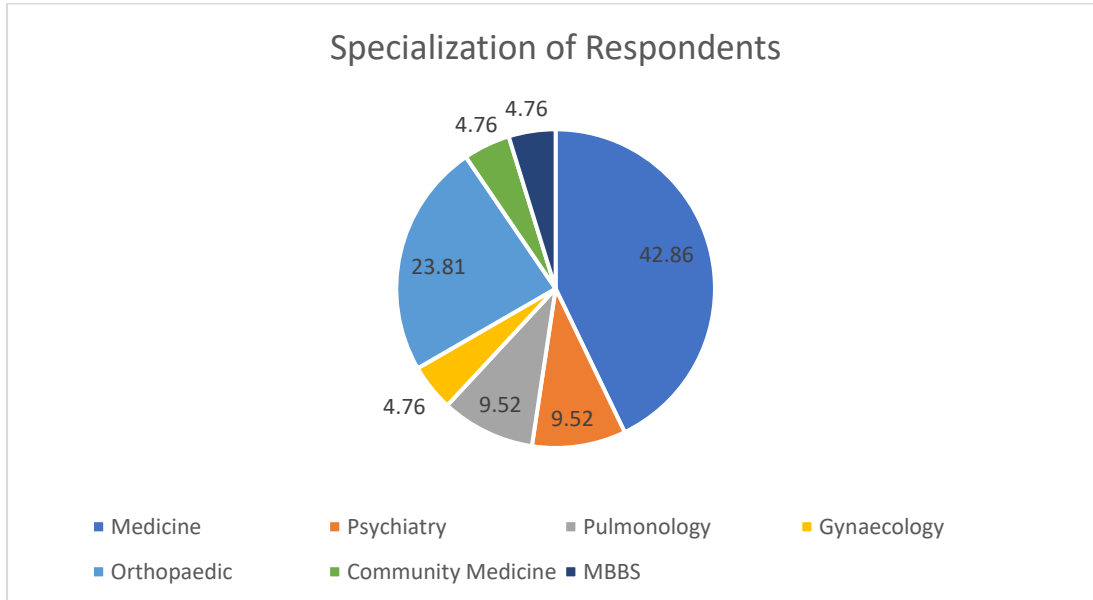
[A] Personal Background of the Respondents

Department wise Distribution of Respondents:



Majority of the respondents (42.86%) were from Medicine Department, followed by Orthopaedic Department to be 23.81%.

Specialization of Respondents:



Similar to the trends of department above, majority of the practitioners (42.86%) were doing or have done M.D. Medicine, followed by medical practitioners (23.81%) doing M.S. Orthopaedic.

Hierarchical Status in Public Healthcare System:

Majority of the respondents (9 respondents, 42.86%) were senior residents (SR). 2 of the respondents (9.52%) were Assistant Professors and Medical undergraduate interns each. 8 practitioners were Resident Doctors of Level 1,2 and 3.

Total Experience in the Medical Field:

Majority of the respondents being Medical Professionals of Residency (pursuing their post-graduation), 61.90% had experience between 6-10 years. It was followed by 6 practitioners (28.57%) having experience of 11-15 years. 1 respondent had less than 5 years of experience and more than 16 years of experience each.

Experience in the current Medical Setup:

When asked about the years of experience the respondent had in the current medical set-up, majority (71.43%) had experience of less than 5 years, followed by 6-10 years' experience

possessed by 4 respondents (19.05%) and having more than 11 years of experience by 2 respondents (9.52%).

Age of the Respondents:

Most of the respondents (61.90%) were between the age group of 26-30 years. It was followed by 28.57% were between 21-25 years of age. 2 respondents were more than 30 years.

Sex of the Respondents:

2/3rd of the respondents were Male, and 1/3rd respondents were Female.

Indemnity Insurance Facility Availed:

Most of the respondents (90.48%) mentioned that they have not availed any indemnity insurance facility for their medical malpractice. 2 respondents (9.52%) had taken the insurance.

Extraordinary Positive Gesture experienced from Patient or their Family:

The respondents were asked about whether they have experienced extraordinary positive gestures from the patient or their family to which most of the respondents (19 respondents; 90.48%) shared that they have positive experiences with medical service users. 2 respondents did not agree to this.

Incidences of Positive Gestures from Patient or Family:

Few of the incidences shared by the medical practitioners were appreciating the medical practitioners, bringing sweets and food items, bringing gifts at the time of discharge, celebrating patients' birthdays with the doctors, not taking any charges when the respondent mentioned they are doctors, putting at par with God. These incidences showcase the trust of the patients on medical practitioners.

[B] Knowledge about the Rights and Duties of Patients:

This section includes the awareness of respondents on various rights and duties of the patients.

Patient's Rights:

Majority of the respondents' agreed to the different rights of patients which were:

(1) Right to avail Medical Facility without discrimination based on age, caste, nationality, gender, religion etc. (20 respondents, 95.24%),

- (2) Right to Confidentiality (21 respondents; 100%),
- (3) Right to Informed Consent (20 respondents; 95.24%),
- (4) Right to determine whether to take or refuse treatment (18 respondents; 85.71%),
- (5) Right to seek details, indoor and outdoor case records, prescriptions, bills, receipt and other evidences of diagnosis, treatment and payment (15 respondents; 71.43%),
- (6) Right to Complaint (21 respondents; 100%), and
- (7) Right to Compensation (17 respondents; 80.95%).

Patient’s Duties:

Most of the respondents agreed to various duties by the patients.

- (1) Duty to provide complete information about your problem (21 respondents; 100%),
- (2) Duty to provide medical history, measures taken before medical consultation, illness, medicines, allergies etc. (21 respondents; 100%),
- (3) Duty to seek complete clarification (21 respondents; 100%),
- (4) Duty of patient not to take discharge against medical advice (DAMA) (11 respondents; 52.38%), and
- (5) Duty to respect doctor or medical staff as expected from them (20 respondents; 95.24%).

All the duties of the patients were majorly agreed by the respondents except for duty not to take DAMA which was disagreed by 6 medical practitioners (28.57%).

[C] Knowledge of Medical Service Providers about Medical Malpractice/Negligence:

This section includes the knowledge of the Medical Service providers about the Medical Malpractice or Negligence.

Formal curriculum including the topic of ‘Medical Malpractice/Negligence’:

The respondents were asked whether they have studied Medical Malpractice or negligence in their formal curriculum. Approximately 3/5th of the respondents (57.14%) shared that they have studied about this at Graduation Level. 42.86% respondents said that they have not studied but knows about the same.

Medium of Information from where the Respondents had heard about incidence of Medical Malpractice:

Approximately 3/4th respondents shared that such incidences are mostly heard from the social media. Television, Newspaper, professional groups etc. are the other medium of information.

Whether personally experienced or know any practitioners with alleged Medical Malpractice:

When the respondents were asked about whether they have personally experienced or know any practitioner with alleged medical malpractice to which 14 respondents (66.67%) agreed and 7 respondents (33.33%) disagreed.

Incidence:

Meaning of Medical Malpractice:

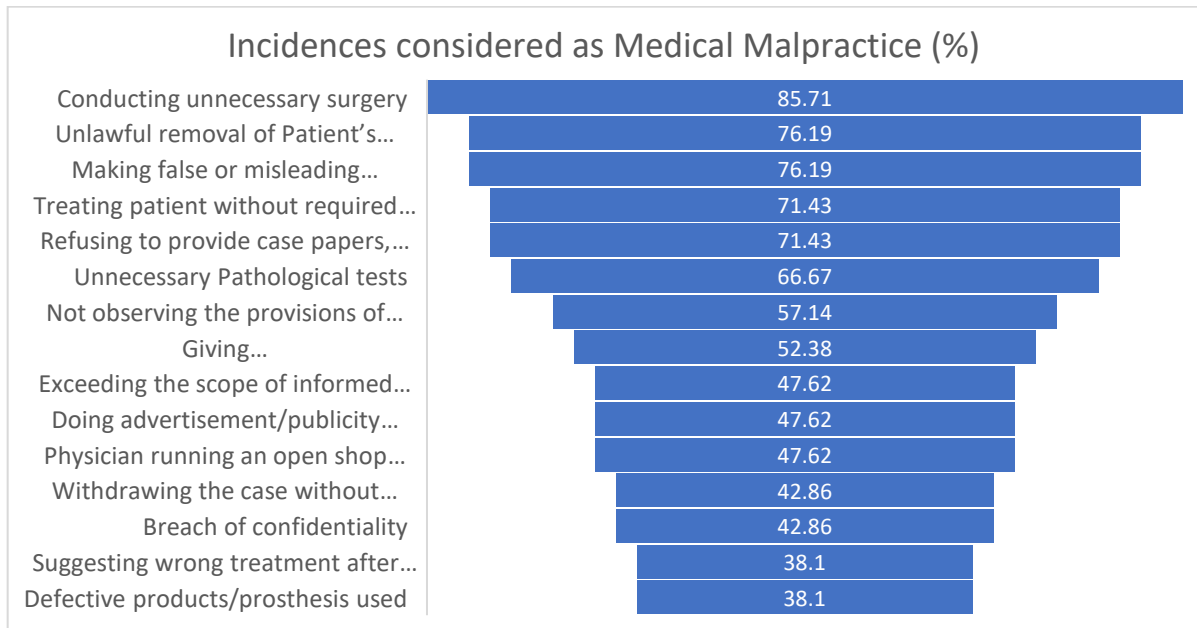
The respondents were asked about the meaning of Medical Malpractice. 2 respondents shared that it is ‘an act of commission or omission that causes harm or injury to an individual’ and ‘breach of the duty done by a doctor to his patient to exercise reasonable care and skill, which results in some physical, mental or financial disability’ each. Majority of the respondents (15 respondents; 71.43%) agreed both to be the meaning of medical malpractice. 2 of the respondents did not agree to any of the above meanings.

Classification of incidences between Medical Malpractice/Negligence:

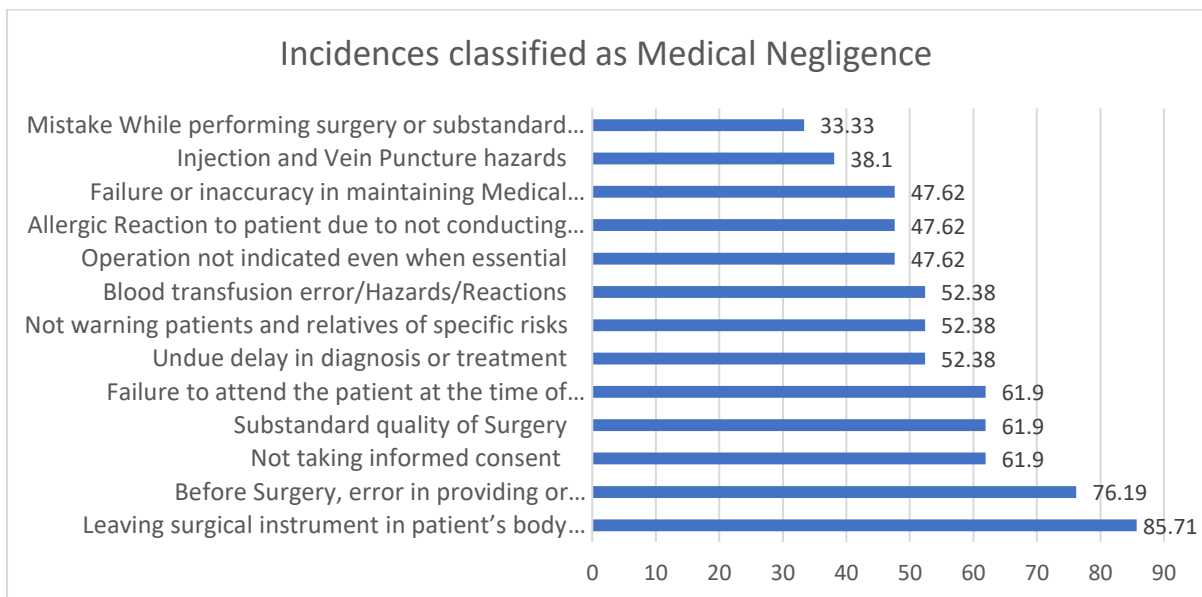
The respondents classified the incidences mentioned below between the Medical Malpractice, Medical Negligence, both, none and not sure.

The classification of the incidences where majority of the respondents agreed are as follows:

Incidences Classified as Medical Malpractice:



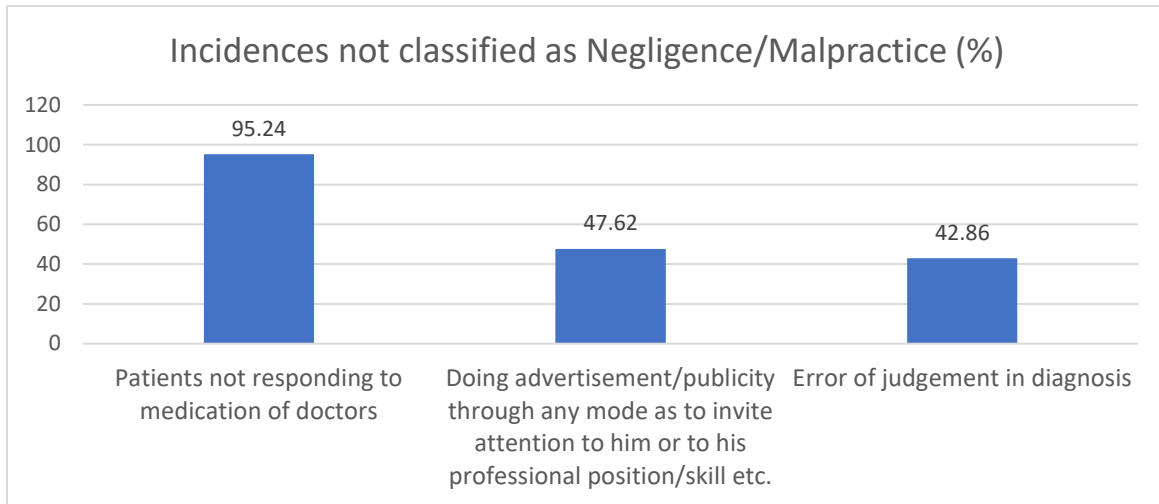
Incidences classified as Medical Negligence:



Incidences classified both as Medical Negligence and Malpractice:

Majority of the respondents (33.33%) mentioned that ‘Mistake while performing surgery or substandard quality of surgery’ is considered as Medical Negligence and Malpractice both.

Incidences not classified as Medical Negligence or Malpractice



[D] Response of Medical Service Providers and Users in the cases of Medical Malpractice/Negligence:

System to record complaints of Medical Malpractice/Negligence:

Majority of the respondents (71.43%) agreed that the current healthcare setup has a system to record the complaints.

Process to escalate the complaint:

Most of the respondents (80.95%) agreed that the current health set up has a process in place to escalate the complaint to the higher authority. When the respondents were asked where can they escalate the same, they mentioned to Resident Medical Officer, Head of the Department, Medical Superintendent.

[E] Views of Medical Service Providers towards Medical Negligence/Malpractice:

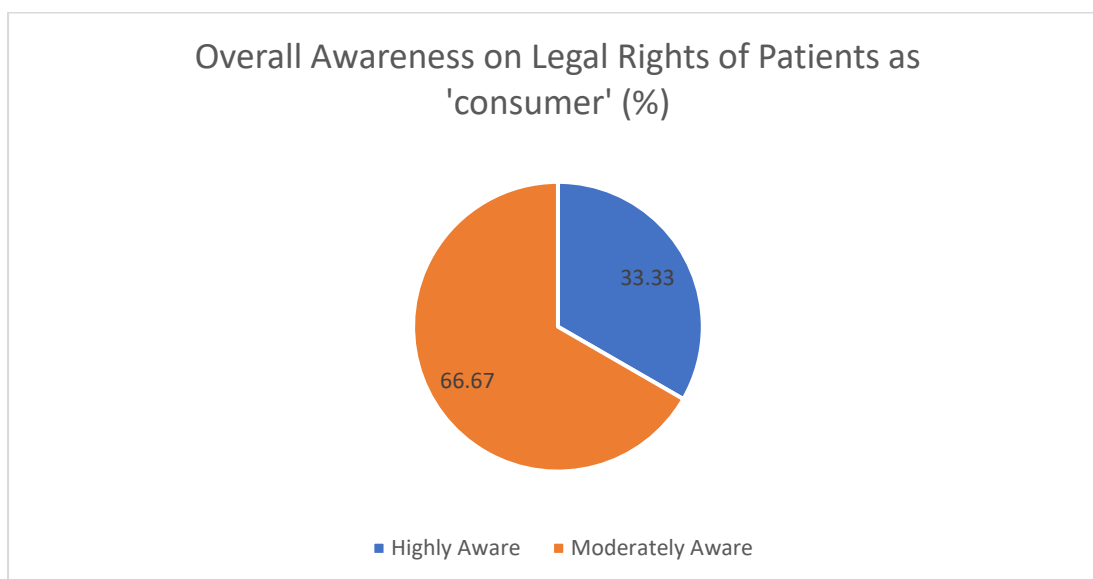
In this section, the respondents were asked to express their views on different statements narrated by the researcher and share whether they agree to the statement or not. Following are the responses received.

Sr. No.	Statement	Agree	Disagree	Not Sure
1	Related to Medical Practitioner			
1.1	Any error done by genuine and unintended mistake should not be considered as medical negligence.	16 (76.19%)	3 (14.29%)	2 (9.52%)
1.2	Personal Problems must be kept at bay during treatment of patient.	20 (95.24%)	0	1 (4.76%)
1.3	Law protects the complainant filing complaint for medical negligence.	9 (42.86%)	8 (38.10%)	4 (19.05%)
1.4	Legal provision for medical malpractice is unnecessary.	1 (4.76%)	20 (95.24%)	0
1.5	Concerns related to alleged malpractice may be solved mutually.	13 (61.90%)	6 (28.57%)	2 (9.52%)
1.6	Medical Practitioner must take reasonable care while treating the patient.	21 (100%)	0	0
1.7	Observing prescribed Medical Ethics are very important for doctors while treating the patients.	21 (100%)	0	0
1.8	Medical Practitioner should continue treating the patient despite he/she acts violently.	7 (33.33%)	13 (61.90%)	1 (4.76%)
1.9	Medical Practitioner must maintain dated and signed documents to treat patients well and for his treatment in future.	21 (100%)	0	0
1.10	Special law should be enacted to manage the risk of occupational violence against doctor and other medical staff.	21 (100%)	0	0
1.11	Corrective measures must be taken against the doctor involved in medical negligence or malpractice.	21 (100%)	0	0
1.12	Doctor should own their mistakes/ negligence.	21 (100%)	0	0
1.13	Patient must take legal help if aggrieved by medical negligence/malpractice.	21 (100%)	0	0
1.14	Every system of medicine is handled by human agency and errors by human being is inevitable and permissible.	12 (57.14%)	5 (23.81%)	4 (19.05%)
1.15	Medical Practice by Quacks must be consciously regulated.	21 (100%)	0	0

1.16	Unfair practices are existing in the medical sector.	21 (100%)	0	0
2	About Patients			
2.1	Usually, patients and their family members without understanding the medical ailment start blaming doctor for medical negligence.	21 (100%)	0	0
2.2	There is at times 'Contributory Negligence' on part of patients which worsens patient's health.	21 (100%)	0	0
3	About Hospital Management			
6.3.1	Overly fatigued doctor must be given time period for rest and rejuvenate in order to prevent possibility of negligence by him/her.	19 (90.48%)	1 (4.76%)	1 (4.76%)

[F] Knowledge on Law/Legal Rights of Patients as 'Consumer':

Overall awareness of Medical Practitioners on COPRA:



The respondents were asked set of questions regarding legal rights of patient as consumer and about the Consumer Protection Act, 2019. 2/3rd of the medical practitioners were moderately aware about the same and 1/3rd of the respondents were highly aware.

[G] Awareness about the Evidence that can help as a Valid Defense against Medical Negligence/Malpractice:

Majority of the respondents agreed to different Evidences that can help to the medical practitioners as a Valid Defense against Medical Malpractice or Negligence. Following are their responses:

1. Qualified Expert’s Opinion for the case for which complaint has been filed: 100% respondents
2. Written records of diagnosis, treatment and payment: 100% respondents
3. For diagnosis of medical ailment, adopting more than one method or multiple laboratory tests: 95.24% respondents
4. Medical Practitioner taking necessary precautions while treating the patient: 100% respondents
5. If patient/family members have given consent despite mentioning possible mishap: 100% respondents
6. Putting forth strong arguments or evidence to prove/disprove medical negligence/malpractice: 90.48% respondents
7. Undue delay beyond prescribed time bar in filing the complaint with valid reasons can be condoned by the consumer forum: 52.38% respondents

[H] Views of Respondents on the Consumer Protection Law with respect to Medical Malpractice:

In this section, the Respondents were asked to share their views by agreeing or disagreeing to the statements mentioned by the researcher. Following are the responses received from the Medical Practitioners:

Sr. No.	Particulars	Agree	Disagree	Not sure
1	Large number of victims of medical negligence do not approach legal systems due to doctor-patient relationship, less education, less awareness etc.	18 (85.71%)	0	3 (14.29%)
2	Patient should not approach court when aggrieved by medical negligence.	0	18 (85.71%)	3 (14.29%)

3	Enacting a law is not necessary for punishing the medical practitioners for medical negligence.	1 (4.76%)	20 (95.24%)	0
4	Medical profession is important to be included in a judicial system to expect medical practitioners to be reasonably skilful in adopting ordinary skills and care.	20 (95.24%)	1 (4.76%)	0
5	Although to err is human, it does not mean that medical practitioners shall be exonerated from their share of liability for causing harm.	19 (90.48%)	0	2 (9.52%)
6	With the Consumer Protection Act, the duration of justice and cost involved reduced dramatically.	13 (61.90%)	0	8 (38.10%)
7	Consumer Protection Act covers the Government and Semi-Government hospitals offering paid services along with free service.	12 (57.14%)	3 (14.29%)	6 (28.57%)
8	Patients file false cases in the Consumer Protection System.	16 (76.19%)	2 (9.52%)	3 (14.29%)
9	Consumer Forums do not have expertise in adjudicating the medical negligence cases.	13 (61.90%)	3 (14.29%)	5 (23.81%)
10	Medical Practitioners shall be included in the bench while handling the cases related to medical malpractice.	20 (95.24%)	1 (4.76%)	0
11	Rather than Consumer Protection Systems, the cases of medical profession should only be handled by the Indian Medical Association or any other medical bodies.	13 (61.90%)	3 (14.29%)	5 (23.81%)
12	Medical Associations should check on unscrupulous, erring and business minded colleagues to avoid incidences of negligence/malpractice.	21 (100%)	0	0
13	Medical Profession should not be covered under the Consumer Protection Act.	5 (23.81%)	13 (61.90%)	3 (14.29%)

[I] Role of Social Worker while interventions for Medical Malpractice:

The respondents were asked whether the social workers can play important role in preventing the cases of medical negligence/malpractice and restoring justice to the victims. To which most of the respondents (85.71%) agreed and only 2 respondents (9.52%) disagreed.

Suggestions by the respondents regarding the Role of Social Worker:

The respondents mentioned set of expectations from the Social Workers in prevention of cases of Medical Malpractice and restoration of justice. The roles that were mentioned by the practitioners were as follows:

- Approach the doctors interested in proper practice and spread awareness through them.
- Awareness on Rights of Patients and help them to be responsible patients.
- Become bridge between doctors and patients.
- Intention of SW shall not to increase the cases of negligence in courts, but to reduce the communication gap between practitioners and patients.
- Building transparency in medical practice.
- Awareness on redressal, how to approach the case.
- Provide unbiased intervention to both the parties.
- Not involving into Controversy; helping patient not to fall prey to WhatsApp University.
- Preventing false cases against doctors
- Counselling
- Gather the proofs.
- Recognize early signs.

Conclusion and Recommendations

The research attempted to understand the Medical Malpractice in the light of the Consumer Protection Law from the Social Work Lens. The phenomena was approached in two phases. In the first phase, the retrospective study was undertaken where the researcher studied 197 judgements passed from the Consumer Dispute Redressal Forums of Vadodara and Ahmedabad from 1st April, 2015 to 31st March, 2023 i.e. 8 years. It was concluded that the medical malpractice/negligence cases can occur at any stage of the Medical Practice i.e. Diagnosis of ailment, treatment, Surgery, pre and post Operative Care, Administering Anaesthesia, supervision of the treatment etc. Majority of the cases are disposed from Vadodara Forum majorly due to infamous Vaduwala Case where 16 patients lost their eye-sight after undergoing the cataract operation from 1998-2006. Hence, majority proven cases were of **eye-related ailments**; followed by Orthopaedic and general medicine related cases. Compensation being a measure of punishment in Consumer Protection Law, the victims were provided average rs. 2,43,068 in the judgements where the medical malpractices were proven. The Consumer protection law claims to provide speedy trial in resolving the consumer grievances. However, it was found that the average duration in the case disposal was 7 years 11 months in the cases where Medical Negligence was proven.

Second Phase of the research was conducted by interviewing two sets of respondents. Medical Service Users (Patients and Caregivers) and Medical Service Providers (Medical Practitioners). Total 183 patients and caregivers were interviewed. The research concluded that Majority of the Respondents were **Highly aware** about the incidences of Medical malpractices and **Moderately aware** about the Consumer Protection Law. In addition, 21 medical service providers were interviewed. Medical practitioners classified the incidences of Medical malpractices/Negligence according to where the incidence was intentional or mistake. Majority of the practitioners were moderately aware about the Consumer Protection Law. It is important to note that majority of the medical service providers and medical service users agreed that social workers have a role to play in prevention of malpractices and restoration of Justice.

The cases of Medical Malpractice has Biopsychosocial and Financial Impacts. The Biological Impacts include Adverse consequential damage due to breach of duty of care by medical practitioners; short term injuries, long term permanent damages or even death of the patients. Its Psychological Impacts include increase mental health issues and adversely affect psychological well-beings.; stress of recovery and post recovery – anxiety, depression,

frustration, changes in sleep patterns, concentration, expression, emotional stress; helplessness due to dependency or unawareness of what to do next.; resorting to addiction; blaming the families; fear of approaching medical system again; stress due to burden of proof. The social impacts are dependence due to temporary or permanent disability, harshness; exclusion; stigmatization; care, emotional support; financial burden on family for expenses towards medical treatment, cost of litigation and trials; loss of employment opportunity; if the victim is sole breadwinner- it multiplies the ill effects; unequal division of labor in the family; difficulty in child-rearing, taking care of elders, nutritional hygiene and clothing needs etc. Maladjustment within families lead to social problems such as domestic violence, problem families etc.; social withdrawal, exclusion; fear of losing social resources etc.

In this Context, carving the role of social workers in the area of Medical Malpractice becomes extremely important. Social work has a role in crisis management, supportive counselling, guiding patients and family members on the redressal mechanisms available for registering complaints, becoming link between patients, families, medical practitioners and redressal mechanisms.

Social Workers can work at micro level with patients and families; at Mezzo level, with neighbourhoods, local organisation, and communities; at Macro level, with the healthcare systems, policy, laws, regulations and international associations.

The researcher recommends the multidisciplinary approach in dealing with the Medical Malpractice in context of Legal framework.

Stakeholder	Broad Roles
Government	<ul style="list-style-type: none"> *Formulate policies for rehabilitation of patients aggrieved due to Medical Malpractices *Creating a portal for registering the concerns regarding unethical practices in Healthcare *Setting up independent regulatory bodies for checks on unscrupulous and negligent medical practices- Government and Private both *Collaboration of different Ministries towards a goal of protecting right to health *Allocation of enough resources and competent workforce in order to prevent the cases of Medical Malpractice

Medical Fraternity	<ul style="list-style-type: none"> *Preventing the cases of Medical Malpractice by discharging the duty to keep reasonable care and skill *Self-regulatory bodies or Associations for promotion of ethical Medical Practice, Education and Research *Enacting Regulations stating the action to be taken in case of medical malpractices *Building competence among doctors and paramedical staff *Inviting the cross-functional teams with clear boundaries of roles for the well-being of patients
Legislature/Justice Systems	<ul style="list-style-type: none"> *Enacting laws to restore justice to the stakeholders in Medical Malpractice *Fair and Speedy trial and adjudication in the interest of justice *Development of Alternative mechanisms for dealing with medico-legal issues
Regulatory Bodies	<ul style="list-style-type: none"> *Regulations for Medical Practice and Education; Drug and medical equipment/device Manufacturing, marketing and Usage. *Monitoring and Evaluation of the same *Take punitive Measures in case of Breach of regulations or standards *Enactment and strict implementation of regulatory standards for Clinical Research
Social Workers/Civil Societies/ Social Scientists	<ul style="list-style-type: none"> *Protecting Health as a Human Right *Crisis Intervention at the time of incidence of Medical Malpractice *Awareness and Sensitization programmes for Local Communities, Medical Practitioners, Lawyers *Becoming a mediator during the process of medical care also to prevent false allegations or violence on Medical Professionals
Participation at Local Level	<ul style="list-style-type: none"> *Sensitisation and proactive approach while dealing with Medical Malpractice cases at local level *Capacity building of Local Self-Governing Bodies, healthcare staff at Primary and Secondary health services; participation by local community

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