ABSTRACT

MEDICAL MALPRACTICE AND CONSUMER PROTECTION LAW: A SOCIO-LEGAL CASE STUDY

A Thesis submitted to

The Maharaja Sayajirao University of Baroda

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DOCTOR OF PHILOSOPHY

IN

SOCIAL WORK

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ABSTRACT

Healthcare error is amongst the 8th leading cause of deaths in the world. A study conducted by Supreme Court Advocate Mahendra Kumar Bajpai, indicated 110% rise in the number of medical negligence in India every year. The cases involve hospital taking improper consent from relatives prior to performing medical procedures or switching hospitals or improper documentation through the course of diagnosis, treatment, and reporting. (Yadav and Rastogi, 2015)

The incidences of medical negligence or malpractice result in the injury, harm, or loss to the patient. At times, the damage is irrevocable. Until the health was declared as a human right, the victim had no other option but to tolerate the injustice/negligence and had no scope for restoration of the loss suffered in any form. The legal framework to deal with the complaints of medical negligence included Civil Law, the Indian Penal Code, 1860 and the Indian Medical Council Act, 1956. These redressal machineries, although having power to take punitive measures against the medical practitioner, did not have any provision for the award of damages to the victims. The Consumer Protection Act, 1986 is the latest additional remedy that a victim could use, and which expressly provides for restoration with a provision to award compensation for the damage. The Consumer Protection Act, 1986, a relatively recent instrument, developed to protect the rights of consumers and empower them to seek justice and redressal of the consumer disputes. Since inception, the law seeks not only to protect the rights in case of purchase of goods, but also encompasses services. However, because of the socio-cultural environment prevailing while enacting the legislation, the medical profession was considered noble and hence, kept out of the purview of the Consumer Protection Act, 1986. The landmark judgement provided by the Supreme Court in the year 1995 in the case of *Indian Medical Association v. V P Shantha and Ors. III (1995) CPJ 1 (SC)* in which medical field was brought under the purview of the Consumer Protection Act, 1986. This was the first time when the patients were promised justice to seek remedy under the COPRA. Also, for the first time, medical service providers had to defend themselves on the allegations by providing appropriate evidence. This opened the door not only to empowering the direct users of the health services, but also their immediate caregivers.

Since the year 1995, i.e. 30 years, a reasonable period has passed where many arguments must have encompassed with respect to the law and inclusion of medical sector in the law. At this juncture, it becomes important to take a stock and see the impact of consumer protection laws on patient, restoration of the damages and understand the onus on the medical service

providers. With the increased assertiveness and awareness, the relationship between doctors and patients are changing. With the changing relationship between doctors and patients due to increased assertiveness and awareness, researcher, in consultation of her research guide, thought that this area was worth exploring. The researcher tried to search literature in this field especially from social work perspective but could not find much research. and hence, was keen to satisfy the quest of this research gap. With the emergence of newer challenges, it becomes the duty of the social workers to bring it under the social work intervention umbrella.

To reduce/prevent the occurrence of such cases and restore the justice to the victims of medical malpractices/negligence, this is one area of social work intervention which is less explored. It has been sufficient time to take a stock and work out the role of social work profession and what we can do to prevent such occurrences and to protect the rights of concerned stakeholders.

Hence, this research was carried out with the hope that its results will contribute towards fair and just medical practices.

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 decision delivery?

Objectives of the Study:

Based on the research questions mentioned above, the objective of the Study is as follows:

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 decision delivery.
6. To study the level of awareness among respondents about medical malpractice/negligence and the Consumer Protection Law.
7. 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.

Research Design:

The study is **exploratory cum 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. **Mixed approach** is adopted involving both the quantitative and qualitative method to study the phenomena.

For the purpose of study, the cases which have already been disposed of 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.

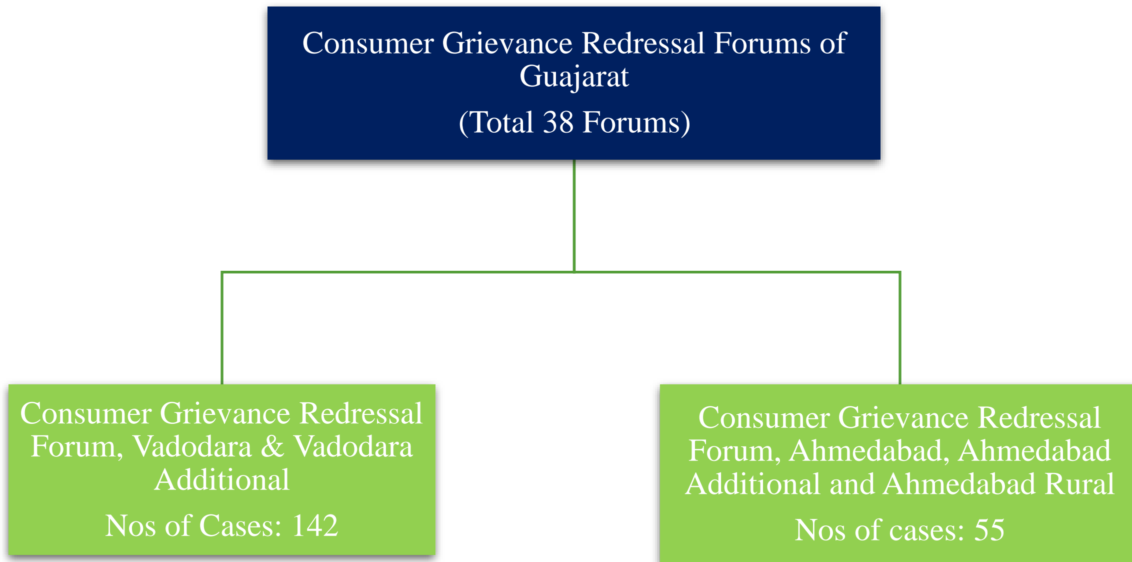
Sample and Sampling:

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 have been undertaken for the study.

Medical Malpractice/Negligence related.



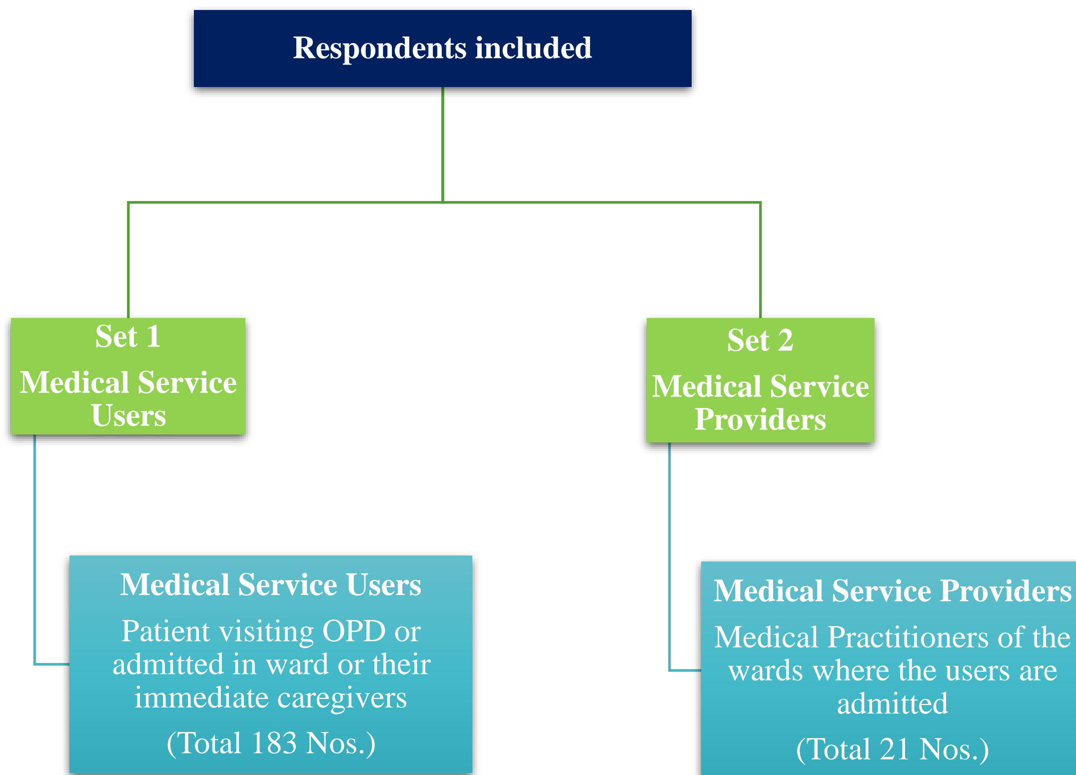
Total 197 Cases

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

2. **<u>In Prospective Cases</u>:** In prospective cases, cluster sampling technique has been used in which Public Hospitals of Vadodara and Ahmedabad District which belong to Central Gujarat State has been 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 the department from which service users received treatments as mentioned above.



<u>Tool for Data Collection:</u>

- **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 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:

Feedback and suggestions by experts such as Medical Practitioners practicing in the discipline of Medico-Legal, Psychiatry, General Medicine, Pathology, Otolaryngology (ENT); Legal practitioners and Medical Social Worker on the interview schedule were incorporated to the extent possible utilizing researcher’s discretion and contextual alignment.

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 have been limited to the districts Vadodara and Ahmedabad of Gujarat State.
(2) Presence of service providers while interviewing service users and vice versa increased the chances of coloured response from the respondents. The researcher however tried to ensure privacy.

Major Findings from Retrospective Study: Judgements on Medical Malpractice with respect to COPRA

Following are the major 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: Total 197 cases for the complaints related to medical negligence/malpractice were disposed of from the Consumer Dispute Redressal Forums of Vadodara and Ahmedabad. Out of all the cases, 55 cases had been disposed of from three Forums: Consumer Dispute Redressal Forum of (1) Ahmedabad, (2) Ahmedabad Additional and (3) Ahmedabad Rural.

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

Distribution of the Cases analyzed from different Consumer Dispute Redressal Forums of Ahmedabad and Vadodara: The majority of the cases disposed of were from Consumer Forum of Vadodara Additional (96 cases), followed by Vadodara (46 cases), Ahmedabad Rural (23 cases), Ahmedabad (19 cases), and Ahmedabad Additional (13 cases).

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 of either due to absence of complainants, withdrawal of complaint, mediation between the parties, fulfilment of previous order and moved to higher court. In 5 cases, the complainant filed the complaint after the time-duration of filing the complaint i.e. 2 years. However, this delay was condoned by the consumer forums of Vadodara and Ahmedabad. In 2 cases, the delay was not condoned by the consumer forums.

Distribution of Judgements where the Medical Negligence was proven: Out of the total 43 cases wherein the Medical Malpractice/Negligence by the medical service providers (Hospital, Medical professionals, staff members) were proven, most of the cases (25 cases) were from the Consumer Dispute Redressal Forum of Vadodara Additional. It was followed by Ahmedabad Rural (7 cases), Vadodara (5 cases), Ahmedabad City (4 cases) and Ahmedabad Additional (2 cases).

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 (44.19%) (majorly cataract surgery). The cases were followed by negligence in treatment of orthopaedic ailment (18.60%), gynaecological problems (11.63%) and general medical ailment (6.98%). The other cases were related to Kidney and gallbladder (4.65%), Skin

and Hair (4.65%), neurological issue (2.33%), Paediatric (2.33%), aesthetic surgery (2.33%) and cancer (2.33%).

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

Basis of Justice in Proven Cases: To prove Medical Negligence in the court of law, the **burden of proof** first lies with the complainant to prove his complaint and then with the opponent to disprove the same. Considering the cases in which medical negligence was proven, above were the basis for the justice such as taking expert opinion, providing strong arguments, inability of medical practitioner to disprove the allegation, discrepancy in reply from the opponents, documents and records, guarantees provided by doctor, lack of proper investigation, absence of doctor and presenting similar judgements passed by National or State Commission. In many cases, there was 'res ipsa loquitor' which means the thing speaks for itself and the gross negligence wherein it was evident that negligence had occurred.

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. It was followed by the compensation of less than Rs. 100,000 and more than Rs. 500,001 in 18.60% cases each. In 6.98% cases, the compensation amount of Rs. 200,001-300,000 followed by Rs. 300,001-400,00 and 400,001-500,000 in 4.65% each. **The average compensation from all the cases was Rs. 2,43,068.**

Time Duration between Case Filing and Disposal in Proven cases: In most of the cases, the time duration between case filing and Disposal was 4-6 years (30.23% cases) and 16-18 years (30.23% cases). It was followed by the less than 3 years in 13.95% cases, 7-9 years in

11.63% cases, 13-15 years in 9.30% cases. It was 10-12 years and more than 18 years in 2.33% cases each.

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

Major Findings from Prospective Study:

PART I: MEDICAL SERVICER USERS: PATIENTS AND CAREGIVERS

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.

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.

Place of Residence of Respondents: As the two public healthcare setting 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: 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 was 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.

[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 patients were aware about the right of patients to be Right to avail medical facility without discrimination, confidentiality, informed consent, accept or refuse treatment, seeking medical records, complaint and of seeking compensation.

Patients' Duties: Majority of the respondents were aware about the duty to provide complete information, medical histories, sharing fears and concerns, seeking clarification, and respecting the medical staff.

[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.

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:

Below were the incidences that were agreed to be medical negligence/malpractice by majority of the respondents:

- **Related to Medical Negligence:**

1) Error of judgement in Diagnosis (80.78%)
2) Choosing wrong treatment after diagnosis (88.52%)
3) Mistake while performing surgery (86.89%)
4) Before surgery, error in providing or administering anaesthesia (83.06%)
5) Failure to attend the patient at the time of emergency (81.42%)
6) Injection and vein puncture hazards due to substandard care (83.06%)
7) Leaving surgical instrument in patient's body after operation. (89.07%)
8) Blood Transfusion errors/hazard/ reaction (86.34%)
9) Failure or inaccuracy in maintaining medical records such as clinical findings, diagnostic test results, preoperative care, operation and post operation notes etc. (87.43%)

- **Related to Medical Malpractice:**

1) Conducting unnecessary surgery (86.89%)
2) Not taking informed consent from patient before surgery (87.98%)
3) Treating patient without required medical qualification (89.62%)
4) Not observing the provisions of Medical Legislations (89.62%)
5) Doing advertisement/publicity through any mode as to invite attention to him or to his professional position/skill etc. (71.58%)

6) Giving approval/recommendation/ endorsement/certificate/report with respect to any drug, medicine, surgical, therapeutic article, apparatus with respect to quality and its use (68.85%)
7) Withdrawing the case without giving proper notice to the patient and family (86.34%)
8) Making false or misleading representation concerning the need or usefulness of treatment. (86.34%)
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. (86.34%)
10) Refusing to provide case papers, bills (85.79%)
11) Physician running an open shop for sale of medicine for dispensing prescriptions prescribed by other doctors or for sale of surgical appliances. (81.42%)
12) Doctor/Nurse/hospital management staff, all can be legally liable in the cases of medical negligence/malpractice (83.06%)

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.

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.

[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.

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.

[I] Opinion of Respondents about Social Workers' Role 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.

PART II: MEDICAL SERVICER PROVIDERS

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 Orthopedic Department to be 23.81%. Remaining respondents were from other departments such as Psychiatry (14.29%), Chest (9.52%), Kidney (4.76%) and Preventive and Social Medicine (PSM) (4.76%).

Specialization of Respondents: Similar to the trends of department in the previous table, majority of the practitioners (42.86%) were doing or have completed M.D. Medicine, followed by medical practitioners (23.81%) doing M.S. Orthopedic. Two respondents were specialized in Psychiatry and Pulmonology each and one respondent each were practicing Gynecology, Community Medicine, and Anesthesia.

Hierarchical Status in Public Healthcare System: The SR were in their final year of residency and were mainly involved in the supervisory duties of other residents (R1, R2 and R3). Hence, they could allocate time of 1-2 hours for providing their responses for the research. The same is reflected in the data as majority of the respondents (9 respondents, 42.86%) were senior residents (SR). One of the reasons for more number of senior resident doctors were 2 of the respondents (9.52%) were Assistant Professors and Medical undergraduate interns each. 8 respondents (38.10%) were Resident Doctors of Level 1,2 and 3 i.e. first, second and third year of residency program.

Total Experience in the Medical Field: Most of the respondents (~80%) were pursuing their post-graduation in medicine or surgery and were in their Residency program. 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 (28.58%) 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: Majority (71.43%) had experience of less than 5 years which was once again in alignment of data mentioned above, 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: The respondents were asked whether they had availed such insurance for their professional practice. 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.

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

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

Patients' Rights: Majority of the patients were aware about the right of patients to be Right to avail medical facility without discrimination, confidentiality, informed consent, accept or refuse treatment, seeking medical records, complaint and of seeking compensation.

Patients' Duties: Majority of the respondents were aware about the duty to provide complete information, medical histories, sharing fears and concerns, seeking clarification, and respecting the medical staff.

[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.

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 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:

1) Conducting unnecessary Surgery (85.71%)
2) Unlawful Removal of Patient's Organs (76.19%)
3) Making False or misleading representation concerning the need or usefulness of the treatment (76.19%)
4) Treating patient without required medical qualification (71.43%)
5) Refusing to provide case papers, bills to patient or caregivers (71.43%)
6) Unnecessary Pathological tests (66.67%)
7) Not observing the provisions of medical legislation (57.14%)
8) Giving approval/recommendation/endorsement/certificate/report with respect to any drug, medicine, surgical, therapeutic article, apparatus with respect to quality and its use (52.38%)
9) Exceeding the scope of informed consent (47.62%)
10) Doing advertisement/publicity through any mode as to invite attention to him or to his professional position/skill etc. (47.62%)
11) Physician running an open shop for sale of medicine for dispensing prescriptions prescribed by other doctors or for sale of surgical appliances (47.62%)
12) Withdrawing the case without giving proper notice to the patient and family (42.86%)
13) Breach of confidentiality (42.86%)
14) Suggesting wrong treatment after diagnosis (38.1%)
15) Defective products/prosthesis used (38.1%)

Incidences classified as Medical Negligence:

1) Leaving surgical instrument in patient's body during surgery (85.71%)
2) Before Surgery, error in providing or administering anesthesia (76.19%)
3) Not taking informed consent (61.9%)
4) Substandard quality of Surgery (61.9%)
5) Failure to attend the patient at the time of emergency (61.9%)
6) Undue delay in diagnosis or treatment (52.38%)
7) Not warning patients and relatives of specific risks (52.38%)
8) Blood transfusion error/Hazards/Reactions (52.38%)
9) Operation not indicated even when essential (47.62%)
10) Allergic Reaction to patient due to not conducting Allergic Testing where necessary (47.62%)
11) Failure or inaccuracy in maintaining Medical Records (47.62%)
12) Injection and Vein Puncture hazards (38.1%)
13) Mistake While performing surgery or substandard quality of surgery (33.33%)

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: The respondents, while classifying various incidences, did not classify a few of the examples as Medical Negligence or Medical Malpractices. One such example- 'Patients not responding to medication of doctors' was correctly classified as not falling under Medical Malpractices or Negligence by majority of the respondents (95.24%). 42.86% respondents mentioned that 'Error of judgement in diagnosis' cannot be considered as Medical Negligence/Malpractice. Almost half i.e., 47.62% respondents did not classify 'doing advertisement/publicity through any mode as to invite attention to him or to his professional position/skill etc' as Medical Malpractice or Negligence.

[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] 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.

[H] 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:

The research attempted to understand Medical Malpractice in the light of the Consumer Protection Law from the Social Work Lens. The phenomena were 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 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 gynaecology 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.

Recommendations:

The researcher recommends the multidisciplinary approach in dealing with the Medical Malpractice in context of Legal framework. The suggestions are provided to following stakeholders:

Stakeholder	**Broad Roles**
Government	*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	*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	*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	*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	*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	*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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