

**“Study Of Medical Negligence Cases Under CPA (Consumer Protection Act)  
Admitted And Judgment Delivered In Nagpur District Consumer Forum  
Between 2010-2015.”**

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**Introduction:**

In India as well as other parts of the world since ancient times, certain duties and responsibilities were borne by persons who entered into the sacred medical profession. The Hippocratic oath that the medical practitioners want to take exemplifies these duties and responsibilities.

In India this concept is not a new one. The ancient text of Charaka's oath clearly proves it. However, medical negligence and therefore the legal aspects of drugs have acquired great significance in recent period. Awareness among people regarding the elemental rights guaranteed by the Constitution has increased in previous couple of decades which have brought the medical community under the scrutiny of both the public and the judiciary. As one act was passed in parliament of India named - Consumer Protection Act in 1986, it has always been a strong tool for consumers in fighting the menace of any service available to them. The Act may be a milestone within the history of socio-economic legislation to satisfy the long felt necessity of protecting the commoner from wrongs that the remedy under the common law for various reasons has become illusory. Medical services is as important as any other service for consumers and like other services, consumers have been facing hardships in this area also. The doctor-patient's relationship has deteriorated significantly and litigation against doctors is increasing day by day.<sup>1</sup>

Since last couple of decade there has been substantial increase in medical negligence and malpractices. The deterioration in the standard of patient care is considered to be due to interest

in the monetary gains in various terms. In contrary patients have also become more aware of their rights with help of advocates and there have been sudden increase in the number of complaints against doctors of various pathies in the consumer forums. Doctors may commit an error by negligence or thanks to other causes. Thus, the ultimate sufferer is none other than the patient. Earlier the patients aggrieved by medical negligence did not have any effective adjudicative body for getting their grievances redressed, but now the situation has changed. There are provisions in the Civil and Criminal law offering remedies to aggrieved patients.

### **Aim & Objectives:**

#### **Aim:**

To Study the medical negligence cases under CPA (Consumer Protection Act) admitted and judgment delivered in Nagpur District Consumer forum between 2010-2015.

#### **Objectives:**

1. To do critical review and study the CPA (Consumer Protection Act).
2. To study the type and pattern of medical negligence cases in Nagpur District Consumer forum during 2010-2015.
3. To determine the reasons of medical negligence in Nagpur city.

### **Materials & Methods:**

#### **Data collection method:**

Nagpur District Consumer Dispute Court's forty cases which are admitted and judgments delivered of alleged medical negligence cases from year 2010 to 2015 were collected for study. After thorough study of judgments, 20 cases in which medical negligence was proved were selected for further analysis in present study.

For accessing the cases judgments permission and active support were obtained from District Consumer Forum in Civil Lines, Nagpur.

Judgments were also accessed from website <http://confonet.nic.in/> and /or <http://cms.nic.in/ncdrcusersWeb/login.do?method=caseStatus> [by using Key Word "Medical Negligence" in text phrase search box]

The CONFONET project has been implemented in the backdrop of The Consumer Protection Act, 1986 which is developed by National Informatics Centre, Ministry of Communication & Information Technology (Govt. of India).

### **Study Design: Observational Study.**

### **Methods of selection of Cases for study:**

#### **Inclusion Criteria:**

1. Proved medical negligence cases and which are admitted before the court and judgments are delivered.
2. Cases were selected during the period of 2010-2015.

#### **Exclusion Criteria:**

1. Pending Cases regarding medical negligence before the court.
2. Medical negligence cases which required further investigation.

### 3. Cases in which are related to rape or any criminal assault.

#### **Assessment Criteria:**

Following parameters/variable were assessed during each case of study for assessment.

Various parameters /variables such as medical subjects and consultant involved in medical negligence, types of Specialty, Profile of hospital, hospital liability, consent, medical records, unqualified staff, investigative tests, operative skill and diagnosis, hospital facility, operative and postoperative complications, referral, advice, time to attend patient, other deficiency in services etc. were studied and discussed.

#### **Observation & Results:**

In this study, Nagpur District Consumer Dispute Court's 40 cases which were admitted and judgments delivered of alleged medical negligence cases from year 2010 to 2015 were collected for study. After thorough study of judgments, 20 cases in which medical negligence was proved were selected for further analysis in present study. For accessing the cases judgments permission and active support were obtained from District Consumer Forum in Civil Lines, Nagpur.

Various parameters /variables such as medical subjects and consultant involved in medical negligence, types of Specialty, Profile of hospital, hospital liability, consent, medical records, unqualified staff, investigative tests, operative skill and diagnosis, hospital facility, operative and postoperative complications, referral, advice, time to attend patient, other deficiency in services etc. were studied and discussed.

Collected data properly classified in the form of graph, tables, and charts and were represented as bellows

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**Table.1 Showing Cases admitted Year wise & judgments delivered:**

<b>Sr.No.</b>	<b>Case No.</b>	<b>Admitted Year</b>	<b>Judgment Delivery year</b>	<b>Duration required for judgments</b>
1	CC/01/335	2001	2011	10 Years
2	CC/93/537	1993	2013	20 Years
3	CC/99/317	1999	2012	13 Years
4	CC/96/380	1996	2012	16 Years
5	284/1997	1996	2013	17 Years
6	CC/06/87	2006	2013	7 Years
7	CC/04/66	2004	2007	3 Years
8	188/2007	2006	2008	2 Years
9	CC/09/527	2009	2015	6 Years

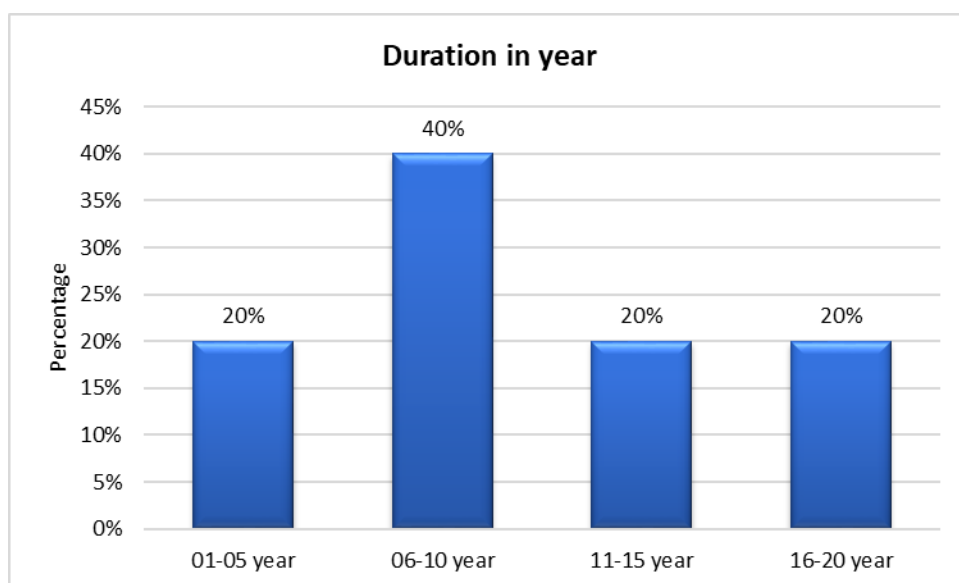
10	CC/11/102	2011	2016	5 Years
11	CC/99/719	1999	2015	16Years
12	CC/97/229	1996	2013	17 Years
13	CC/06/14	2007	2014	7 Years
14	CC/06/65	2008	2014	6 Years
15	CC/99/487	2002	2014	12 Years
16	CC/97/116	2000	2015	15 Years
17	CC/21/2006	2008	2015	7 years
18	CC/153/06	2007	2015	8 Years
19	72/2007	2008	2015	7 Years
20	CC/13/30	2013	2014	1 Year

**Table.2 Showing Year required for judgment:**

<b>Sr.No.</b>	<b>Duration in year</b>	<b>Number of Cases</b>	<b>Percentage</b>
1	01-05 year	04	20.0%
2	06-10 year	08	40.0%
3	11-15 year	04	20.0%
4	16-20 year	04	20.0%
<b>Total</b>		<b>20</b>	<b>100</b>

In this study total 20 cases were observed, it was observed that 04 cases required the duration about 1 to 5 years, 08 cases were taken the 6-10 years duration for judgment delivery, 04 cases required 11-15 years of duration awhile another 4 cases taken near about 16-20 years of duration for the judgments. So an average the duration for judgment delivery was about 9.85 years which is quite more.

**Graph.1 Showing Year required for judgment**

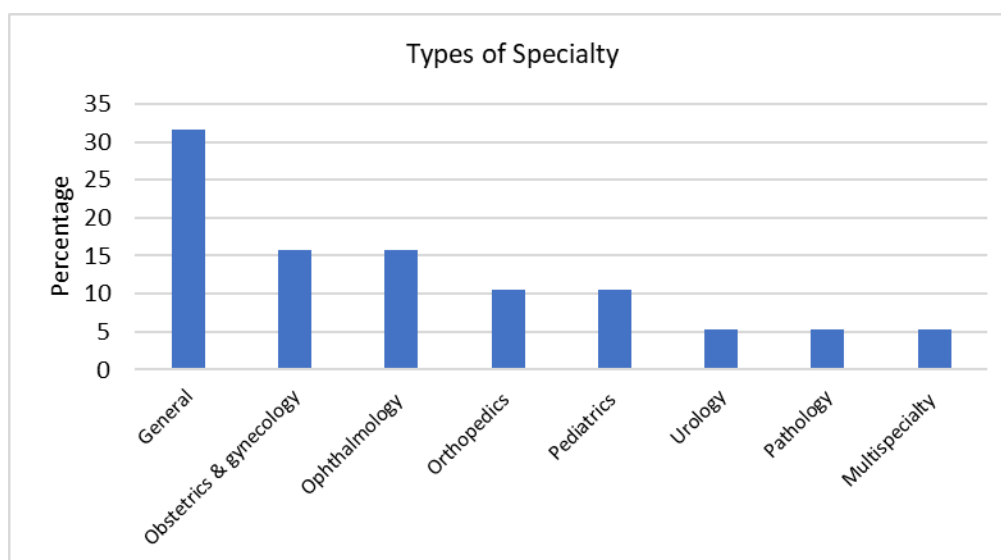


**Table.3 Showing Types of specialty for cases admitted in the court:**

Sr.No.	Types of specialty	Number of Cases	Percentage
1	General	06	31.6
2	Obstetrics & gynecology	03	15.8
3	Ophthalmology	03	15.8
4	Orthopedics	02	10.5
5	Pediatrics	02	10.5
6	Urology	01	5.3
7	Pathology	01	5.3
8	Multispecialty	01	5.3
	<b>Total</b>	<b>19</b>	<b>100</b>

It was observed that out of total 20 cases 19 cases described the specialty of treatment. Among them most of were from General category.i.e.06 [31.6%], 03[15.8%] cases were from Obstetrics & gynecology department, 03[15.8%] cases were from Ophthalmology specialty, 02[10.5%] were from Orthopedics, 2[10.5%] cases were from Pediatrics department while single case reported from the Urology, Pathology and Multispecialty respectively.

**Graph.2 Showing Types of specialty for cases admitted in the court:**

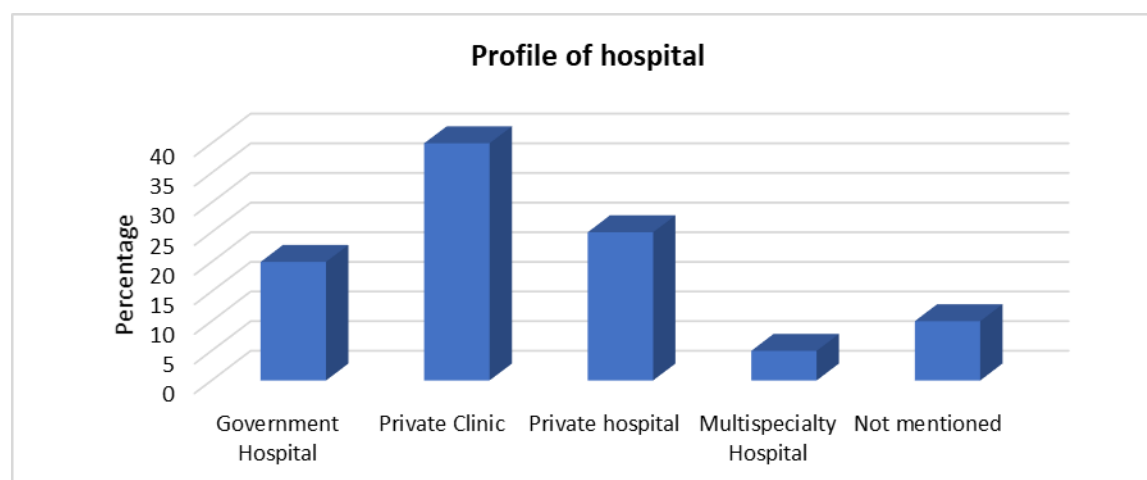


**Table.4 Profile of hospital from cases admitted in the court:**

Sr.No.	Profile of hospital	Number of Cases	Percentage
1	Government Hospital	04	20.0
2	Private Clinic	08	40.0
3	Private hospital	05	25.0
4	Multispecialty Hospital	01	05.0
5	Not mentioned	02	10.0
<b>Total</b>		<b>20</b>	<b>100</b>

In this study of twenty cases, 04[20%] hospital were government, 08[40%] were run by privately which are run by someone, 05[25%] hospital were private big hospital, single was multispecialty hospital, status of two hospital not found in judgments.

**Graph.3 Profile of hospital from cases admitted in the court:**



### **Procedural Investigation points in Judgments:**

#### **1. Consent :**

It was observed in access that well informed consent was obtained from either patients or relatives of patients before starts of any clinical or investigational medical procedure to be carried on patients in order to provide medical managements to the patients. This consent was taken either by hospital staffs or doctor present at the time of procedure or treatment.

#### **2. Medical records:**

As it is mandatory to keep the records of clinical procedure or any other legal documents prepared by hospital during rendering the medical service to the patients. In this study it was observed that in 8[40%] cases didn't maintained proper medical records by hospital while in other 12[60%] cases, medical record maintained by the hospital.

#### **3. Unqualified staffs:**

As per Bombay nursing home act and all concerned council of medical education has laid down the rules regarding qualified staff has to be kept in the hospital. In this study 12[60%] hospital has not appointed any unqualified staff in their hospital however there was no record found in the judgments of 8[40%] about appointing unqualified staff in the hospital.

#### **4. Investigation or Pathological Tests:**

All routine investigation (CBC, BSL, Urine) were carried out in 08 [40%] hospitals, in some cases blood investigation and urine test was advised while in two cases CT scan and

ureteroscopy was advised. However in five cases there was no any laboratory investigation or blood investigation was prescribed.

### **5. Operative skills and Diagnostic skills.**

It was also observed in the judgments that, court has noticed about the operative skill and diagnostic skill so doctors. Out of 20 cases it was noted that, in 13[65%] cases it was appropriate, in 04[20%]cases it was not adequate or incorrect operative skill or diagnosis, while it was absent in single case.

### **6. Hospital facility:**

It was also noted in the judgments about the existing facility available in the hospital. It was about the basic life support, oxygen, medicine, skilled staff, electricity etc. In this study near about 15[60%] hospitals were having adequate facility and infrastructure, however there was no basic hospital facility was available in 5[20%] hospitals.

### **7. Operative and postoperative complications:**

Among twenty cases five cases were related to operative and post-operative care. In which two cases were from Orthopedics surgery, each from urology, ophthalmology and general. The Orthopedic, Urology and Ophthalmology were private clinic and having taken care of all standard protocol during operative and post-operative procedures. However one case at orthopedic surgery and one was at general hospital where inadequate care was done in operative as well as during postoperative complications.

### **8. Time to attend Patients:**

In almost all cases there was adequate time given by medical staff to attend the patient for any complains or routine round of doctors. However in single case there was delay to attend the patient in time, this was general hospital owned by government. Along with delay in attending the patient there was not having adequate Operative and diagnosis skills of medical staffs.

### **9. Referral:**

Among 20 cases four cases are referred further in view of further management of any complication aroused thereof. Among that two from orthopedics and surgical specialty, one was from Ophthalmology and one from multispecialty. However there was adequate facility in hospital, in spite only one hospital was not having adequate diagnosis or operative skills.



### 10. Type of Medical Negligence: (Table no. 5)

Type of medical negligence	Specialty involved	Number of cases	Percentage
Incorrect analysis of blood	Pathology	01	05.0%
Acted negligently while giving injection	General	01	05.0%
Wrong Treatment & diagnosis , delay in caesarean operation	Obstetrics & gynecology and general	02	10%
Delay in treatment & required test not done immediately	General	01	05.0%
Negligence in performance of service & delay in treatment	Orthopedic, Urology, Ophthalmology and General	07	35%
Non availing of benefit under family care plan	Pediatrics	01	05.0%
Deficiency in rendering Medical Service & treatment	Obstetrics & gynecology and general, pediatrics,	07	35%

### Observations:

In one case where the patients was opted for the service of pathological investigations, in which incorrect analysis of blood was the medical negligence. In one other case where it took place in General hospital where medical staff acted negligently while giving injection. Wrong Treatment & Wrong diagnosis at general hospital while in another cases, delay in caesarean operation was resulted in medical negligence.

Most of medical negligence was noted for the cause of Negligence in performance of service & delay in treatment in seven cases (35%), Deficiency in rendering Medical Service & treatment was also observed in seven cases. (35%)

In different case Non-availing of benefit under family care plan is the reason held for medical negligence in pediatrics specialty.

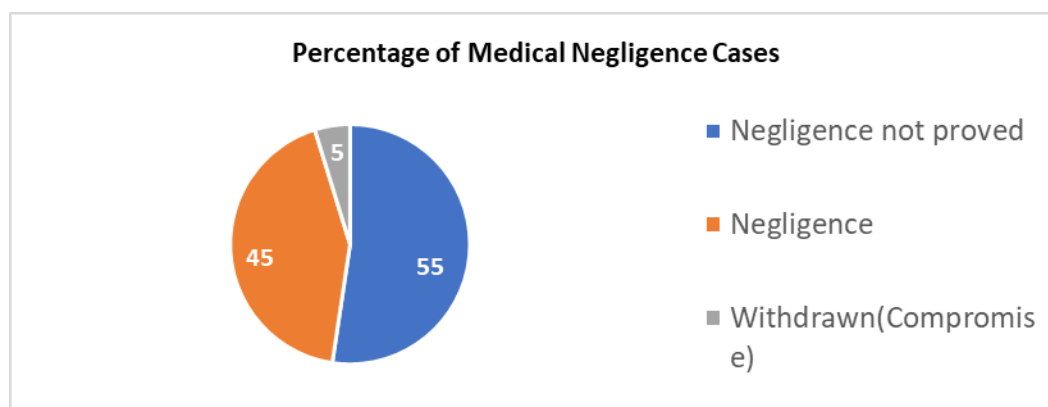
**Table:6 Distribution of Medical Negligence Cases (Negligence: Proved/Not Proved)**

Sr.No.	Types	Number of Cases	Percentage
1	Negligence not proved	11	55
2	Negligence	09	45
3	Withdrawn(Compromise)	01	05
	<b>Total</b>		<b>100</b>

There is need to create awareness and interaction among medical fraternity and patient and advocate dealing with medical negligence cases.

In this study act of negligence was proved in nine cases (45%) and are also entitled for compensation. In 11 cases (55%) medical negligence was not proven due to Allegations not substantiate by a cogent evidence, respondents not liable to pay compensation hence appeal dismissed in most of cases. In single case complaint is disposed off as withdrawn (Compromise).

Graph.4 Distribution of Medical Negligence Cases:



### **Discussion :**

The ancient text of Charaka's oath clearly proves the ethics of human being in medical profession. However, medical negligence and therefore the legal aspects of drugs have acquired great significance in recent period. Awareness among people regarding the elemental rights guaranteed by the Constitution has increased in previous couple of decades which have brought the medical community under the scrutiny of both the public and the judiciary.

In this study, Nagpur District Consumer Dispute Court's 40 cases which were admitted and judgments delivered of alleged medical negligence cases from year 2010 to 2015 were collected for study.

Various parameters /variables such as medical subjects and consultant involved in medical negligence, types of Specialty, Profile of hospital, hospital liability, consent, medical records, unqualified staff, investigative tests, operative skill and diagnosis, hospital facility, operative and postoperative complications, referral, advice, time to attend patient, other deficiency in services etc. were studied and discussed.

### **Conclusion:**

1. An average the duration for judgment delivery was about 9.85 years which is quite more.
2. Medical negligence cases are admitted from both private and public sector.
3. Most of negligence cases happened due to delay in attending the patients, unqualified staff, in most of cases the cause of negligence in performance of service & delay.
4. In 11 cases (55%) medical negligence was not proven due to Allegations not substantiate by a cogent evidence.
5. Medical Ethics teaching and training on soft skills, especially of good communication skills, doctor patient relationship will be fruitful to avoid raised cases of medical negligence.

### **Recommendations:**

1. Hospital and doctors should have taken any indemnity liability insurance for the compensation.
2. There is need for similar studies and frequent audit of medical negligence cases to find out the new and emerging causes of medical negligence.

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