



# RETHINKING MEDICAL NEGLIGENCE DISPUTES:

*A Call for a More Compassionate Approach*

A u g u s t e d i t i o n

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Justice is a pillar of society, and its transparency is vital for upholding its integrity. However, when it comes to medical negligence cases, the exposure of sensitive and distressing patient details in open court raises questions about the most appropriate platform for resolution. Are traditional courts truly the best avenue for handling medical negligence claims, or should we consider alternative dispute resolution processes that offer greater privacy and empathy?

One undeniable truth is that the wheels of justice can turn slowly. For a patient whose life has been shattered by a botched medical procedure, waiting for years to be compensated while living in unbearable suffering is a harrowing experience. The principle of justice being seen to be done conflicts with the need for patient confidentiality. Shouldn't we find a way to balance these two vital aspects of the legal process?

The financial burden associated with legal representation can be daunting for patients and their families. Many have already expended significant resources in their struggle to recover from the medical mishap they wish to address in court. The idea of facing additional exorbitant costs for legal representation is understandably discouraging.

Moreover, the financial might of hospitals often tips the scales in their favour, leaving patients with limited options to seek justice. This system often results in hospitals expending substantial resources defending even meritless claims instead of allocating those funds to enhancing their services for future patients.

Courts, being public forums, expose the intimate details of cases to the world. The judgments are published without censorship, leading to the dissemination of private information about patients who are already dealing with immense physical and emotional pain. The lack of privacy not only strips individuals of their dignity but can also have far-reaching consequences in their personal lives.

In March 2022, the High Court delivered a ruling in a claim for damages from a woman who had suffered terribly due to what the Court found to be negligence on the part of the public health system and some of its doctors. The patient had been admitted to undergo a hysterectomy in September 2012, but unfortunately her ureter had been cut during the operation. She was badly managed and suffered incontinence thereafter, resulting in great humiliation for her, and her husband leaving the marriage. As I read that judgment, I cringed at the detail of her suffering and descriptions of the pain she went through. As an adult, her name was not censored and everyone who knows her and has read that judgment now knows very intimate, unpleasant details of her life, which I think is unfair. She won the case, after 10 long years (because remember the wheels of justice turn slowly), but in the publication of that judgment, she lost a lot of her dignity. No one should have to endure such a loss of privacy while seeking justice for medical negligence.

Considering these factors, it becomes evident that dispute resolution outside the courtroom is often a more compassionate and practical option for both physicians and patients. Such alternatives save valuable time and resources and, in cases of genuine wrongdoing, can foster a quicker healing process. Mediation, for instance, provides a platform for open dialogue and compromise, enabling parties to work together towards a fair resolution.

In advocating for alternative dispute resolution, I often call for a more empathetic and understanding approach to handling medical negligence disputes. Patients and caregivers should be given the opportunity to resolve matters without the added stress of public exposure. By prioritizing privacy and respect, we can create a fairer, more compassionate system that not only upholds justice but also protects the well-being and dignity of those affected by medical negligence.

In conclusion, I think it is worth reconsidering the traditional courtroom setting for medical negligence disputes and embracing alternative dispute resolution processes that foster empathy, privacy, and a swifter path to resolution. By doing so, we can reshape the landscape of medical litigation, promoting healing and understanding for both physicians and patients alike.