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Editorial

Human rights in maternity care



In a testament to the developing recognition of the power of human rights to improve maternity care, FIGO is dedicating a plenary topic to sexual and reproductive rights at its World Congress in October. While access to life-saving maternity services has traditionally been cast in terms of a maternal right to life and health, human rights principles have only recently begun to receive attention as a means of improving the quality of the maternity care that women receive. A human rights approach to maternity care is overdue: the principles of dignity, equality and respect, combined with their enforcement through national and international legal mechanisms, have the power to transform maternity care around the world.

What are human rights?

Human rights are a set of universal principles based on the fundamental recognition that all humans are equally worthy of respect. The principles of dignity, autonomy, equality and respect are all drawn from the belief, most powerfully articulated in Kant's categorical imperative, that a person must be treated as an ends and not a means. This imperative has particular resonance in maternity care, when a woman risks being viewed as a means for the creation of life rather than an end in herself. Human rights reinstate the woman as the central agent in childbirth by demanding that her caregivers treat her as a person worthy of respect and capable of making her own autonomous decisions about her child's birth.

As legal principles, enshrined in international conventions on human rights and national human rights legislation, human rights have practical power. In the United Kingdom, the Human Rights Act 1998 imposes a legal obligation on professional caregivers employed by NHS bodies to respect rights as set out in the European Convention on Human Rights. Article 2 of the Convention protects the right to life and requires the state to take positive action to ensure that critical healthcare services, including maternity care, are available to everyone. Human rights do not stop at ensuring access to maternity services. The rights in the Convention and under international treaties, including the Convention on the Elimination of Discrimination against Women and the Convention on Human Rights and Biomedicine, extend to protecting the way in which individuals are treated by their caregivers. These include the right not to be subjected to degrading treatment, the right to informed consent and the right to non-discrimination.

Healthcare professionals commonly consider the law to have a negative and distracting influence on care. The climate of

litigation, particularly in maternity care, can make the law appear punitive. Human rights law – with its foundations in respect for human dignity – provides a powerful corrective to the traditional dominance of clinical negligence law in healthcare. Legal claims for compensation can be made for violation of rights after poor care has occurred (as they were by the families of patients who died at Mid-Staffordshire NHS Foundation Trust), but the real value of dignity exists in its pre-emptive power. When caregivers respect women's dignity, they build a relationship of mutual respect and trust that will guard against harm.

What role do human rights play in maternity care?

The recent Bohren systematic review on the mistreatment of women in health facilities provides powerful evidence that women in countries around the world are particularly susceptible to human rights abuses during childbirth.¹ The review included studies from both the developing and developed world and showed that no country can be complacent about the treatment of women in maternity services. The effect of abuse by professional caregivers on women is profound. As the White Ribbon Alliance (WRA) has stated, 'A woman's relationship with her maternity providers is vitally important. Not only are these encounters the vehicle for essential lifesaving health services, but women's experiences with caregivers can empower and comfort or inflict lasting damage and emotional trauma'.² Respectful care is an essential component of safe care. Caregivers who listen to women, provide them with accurate information and respect their choices make a fundamental contribution to a safe maternity service. As the investigations into failing hospitals in the UK have repeatedly shown, lack of respect for patient dignity has gone hand in hand with clinical and systemic failings that have compromised patient safety.³

The WRA Charter, published in 2011, signalled the beginning of a new approach to assessing maternity care that focused on the promotion of human rights values rather than purely clinical outcomes. The Charter characterises the abuses that women suffer in maternity care as violations of universal human rights, bringing established legal principles to bear on the experiences of women

¹ Bohren MA, Vogel JP, Hunter EC, Lutsiv O, Makh SK, Souza JP, et al. (2015). The mistreatment of women during childbirth in health facilities globally: a mixed-methods systematic review. *PLoS Med.* 12(6). Available here: <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001847>.

² White Ribbon Alliance, Charter for Respectful Maternity Care (2011). Available at: <http://whiteribbonalliance.org/campaigns/respectful-maternity-care/>.

³ Francis, Report of the Mid-Staffordshire NHS Foundation Trust Public Inquiry (February 2013); Kirkup, Report of the Morecambe Bay Investigation (March 2015).

receiving maternity care. It has prompted a fuller appreciation of the role of human rights in maternity services. As the WHO stated in 2014, '*Rights-based approaches to organizing and managing health systems can facilitate the provision of respectful, quality care at birth.*'⁴ Countries as diverse as Nigeria and Venezuela have legislated to protect human rights in maternity care and around the world, services are being configured with respectful care at their heart. Many regional bodies are promoting a human rights approach to maternity care, including the Royal College of Midwives, which is collaborating with Birthrights and the British Institute for Human Rights in the publication of a Human Rights Guide for Midwives this Autumn.

Alongside the campaigns for respectful maternity care, women themselves have turned to human rights law to bring about change in their countries. In *Ternovszky v Hungary*, the European Court of Human Rights considered a claim by a woman who challenged the refusal by the Hungarian government to regulate home birth.⁵ The Court considered the claim under Article 8 of the European Convention, which enshrines a right to private life. The Court found that '*the circumstances of giving birth incontestably form part of one's private life*' and ruled that the Hungarian government's failure to make regulations enabling midwives to attend women giving birth at home violated Article 8. In *Konovalova v*

Russia, the Court found that the failure to obtain a woman's consent to the presence of medical students during her labour constituted a violation of Article 8 and stated that all medical interventions, however minor, required consent.⁶ The Court is now considering numerous childbirth claims from women in other European countries. While legal cases will always concern particular aspects of childbirth, the principles that the Court has espoused apply to all decisions in pregnancy and childbirth, from antenatal screening to choice of position in labour. Human rights provides a framework in which women can make choices and ensure that their choices are respected.

The surge of interest in human rights in childbirth reflects a new international consensus that respectful maternity services are critical to ensuring the health of women and babies. It also reveals the enduring universal power of human rights principles that apply to all women in all countries. A human rights approach to maternity care offers the chance to enrich relationships between women and caregivers by focusing on individual, not institutional, care.

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⁴ WHO, 'Prevention and elimination of disrespect and abuse during childbirth' (2014). Available here: http://apps.who.int/iris/bitstream/10665/134588/1/WHO_RHR_14.23_eng.pdf?ua=1&ua=1.

⁵ European Court of Human Rights, *Ternovszky v Hungary*, 14 December 2010.

⁶ European Court of Human Rights, *Konovalova v Russia*, 9 October 2014.