Why Human Rights in Childbirth Matter
Introduction

Who we are and what we do

- Set up in 2013.
- Raise awareness about human rights in maternity care.
Factsheets available: birthrights.org.uk.
- Provide individual advice service to women and professionals.
- Undertake research, e.g. Dignity Survey 2013.
- Campaign on human rights in childbirth.
- Train health professionals.
Factsheets and Advice

birthrights

Protecting human rights in childbirth

CONSENTING TO TREATMENT

Summary

Pregnant women – like everyone else – have the right to make their own decisions about their bodies. It is against the law to give medical treatment to a pregnant woman unless she agrees to it. This is known legally as giving her consent.

When is consent required?

Consent is required for every medical procedure.

Consent must be obtained before any examination or investigation is carried out, or any care or treatment is provided.

The fact that a woman has consented to a particular procedure in the past does not mean that she consents automatically to the same procedure again.
Dignity in Childbirth

THE DIGNITY SURVEY 2013: WOMEN’S AND MIDWIVES’ EXPERIENCES OF UK MATERNITY CARE

Birthrights Dignity in Childbirth Forum, 16 October 2013
Research

The Human Rights & Dignity Experience of Disabled Women during Pregnancy, Childbirth and Early Parenting

Jenny Hall, Bethan Collins, Jillian Ireland and Vanora Hundley
Media and Campaigns

ARE WOMEN BEING DENIED CAESAREANS?
Education and Training
YOUR RIGHTS IN CHILDBIRTH:
THE BASICS
“The human rights argument in the public health field is commonly framed within the context of access to healthcare … But while access to healthcare is necessary for optimal maternity care, it is not sufficient. Disrespectful and abusive care happens even when women have free access to healthcare.”

Mande Limbu, White Ribbon Alliance
Human rights in maternity care

“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. Either way, women’s memories of their childbearing experiences stay with them for a lifetime and are often shared with other women, contributing to a climate of confidence or doubt around childbearing.”

White Ribbon Alliance, Respectful Maternity Care (2011)
Human rights in maternity care

How did your experience of childbirth affect your feelings about yourself? (by type of birth)

- Spontaneous vaginal: 78% positive, 22% negative
- Instrumental: 23% positive, 77% negative
- C-section: 27% positive, 73% negative

Birthrights Dignity in Childbirth Survey (2013)
Anne’s story

“I could write you a book about my first birth...”
Human rights in maternity care


Across the world many women experience disrespectful, abusive, or neglectful treatment during childbirth in facilities. These practices can violate women’s rights, deter women from seeking and using maternal health care services and can have implications for their health and well-being.

Every woman has the right to the highest attainable standard of health, including the right to dignified, respectful care during pregnancy and childbirth.
Principles: dignity

‘Humanity itself is a dignity; for a man cannot be used merely as a means by any man but must always be used as an end.’ Kant, Metaphysics of Morals

‘All human beings are born free and equal in dignity and rights.’

Article 1, Universal Declaration of Human Rights
Principles: dignity

Human dignity offers a **moral and legal basis** for:

A. Resisting degrading and abusive treatment  
B. Asserting autonomy

A pregnant woman remains human. She is not simply a means to producing a baby. Her humanity must remain ‘an end in itself’.

Recognising a pregnant woman’s humanity means that we must treat her as a person worthy of respect.
Principles: respectful treatment

‘No one shall be subjected to inhuman or degrading treatment’ Article 3, European Convention on Human Rights

Failure to provide care, including pain relief, which is needed to avoid preventable suffering can amount to inhuman or degrading treatment.

The Mid-Staffordshire public inquiry revealed the impact that failure to respect basic dignity had on patients. The labour ward at Stafford Hospital was implicated in the scandal. Human rights claims brought under Article 3 on behalf of over 100 of the Mid-Staffs patients have succeeded.
Principles: autonomy and consent

‘In our judgment, while pregnancy increases the personal responsibilities of a woman, it does not diminish her entitlement to decide whether or not to undergo medical treatment. Although human … an unborn child is not a separate person from its mother. Its need for medical assistance does not prevail over her rights. She is entitled not to be forced to submit to an invasion of her body against her will, whether her own life or that of her unborn child depends on it. Her right is not reduced or diminished merely because her decision to exercise it may appear morally repugnant.’

Court of Appeal, S v St George’s Healthcare Trust (1998)
Midwives and doctors are under a professional obligation to respect a woman’s decision, regardless of whether you agree with a woman’s choice.
Foetal rights?

In the UK, there is no recognition of a separate legal right or interest that is capable of being used to override a woman’s consent to care: *Re MB* (1997), *S v St George’s Healthcare Trust* (1998).

However, social and reproductive changes, the development of sophisticated scanning technologies and the growing influence of the ‘foetus as patient’ movement conceived in the USA, contribute to a cultural conception of fetal separateness and even antagonism with its mother.

‘*[T]he physician and other obstetric providers have an independent obligation, as a matter of professional integrity, to protect fetal, and neonatal patients.*’ Chervenak et al, ‘Planned home birth: the professional responsibility response’ AJOG (2012)

‘*Women have the right to choose how and where to give birth, but they do not have the right to put their baby at risk.*’ Lancet (2010)
Caregiver attitudes to autonomy

Do health professionals have a clear understanding of the legal framework in which they operate?

‘Maternity care professionals demonstrated a poor understanding of their own legal accountability, and the rights of the woman and her fetus. Midwives and doctors believed the final decision should rest with the woman; however, each also believed that the needs of the woman may be overridden for the safety of the fetus. Doctors believed themselves to be ultimately legally accountable for outcomes experienced in pregnancy and birth, despite the legal position that all health care professionals are responsible only for adverse outcomes caused by their own negligent actions.’ Kruske et al (2013)
Montgomery v Lanarkshire Health Board

Mrs Montgomery, a pregnant diabetic woman with a large baby, was not informed by her obstetrician of the chance of shoulder dystocia. Baby was damaged during birth, woman suffered serious perineal and pelvic trauma.

i) **Dialogue:** in order for a patient to make an informed decision, there must be a conversation between doctor and patient.

ii) **Material risks:** a material risk is one to which a reasonable patient would attach significance.

iii) **Consent forms:** the Court emphasised that the doctor’s obligation will only be discharged if the information is imparted in a way that the patient can understand. ‘The doctor’s duty is not therefore fulfilled by bombarding the patient with technical information which she cannot reasonably be expected to grasp, let alone by routinely demanding her signature on a consent form’ (Montgomery, para 90).
A survey by Birthrights found that 24% of women who’d had an instrumental birth said they hadn’t given consent.
Principles: choice

Article 8 of the European Convention on Human Rights protects the right to private life. The European Court of Human Rights recognised in Ternovszky v Hungary (2010) and Dubska v Czech Republic (2016) that choices about childbirth are part of private life.

Health professionals are obliged by the Human Rights Act 1998 to respect women’s choices, subject to proportionate limitations.

Implements the rights in the European Convention of Human Rights in UK law. All public bodies and their staff, including hospitals and health professionals, are legally obliged to respect human rights.

Potential for legal action under the Human Rights Act for poor care, e.g. human rights claims brought under Article 3 by relatives of Mid-Staffs patients.

- Chapter 1 of Dutch constitution sets out “fundamental rights” and protects the **freedom of religion**, **freedom of speech**, **freedom of association** and **freedom of assembly**, the **right to privacy** and bans discrimination.

- Signatory to European Convention on Human Rights and the European court has considered Dutch cases.

- High rankings on civil liberties and freedom indexes.

How do human rights improve maternity care?

• Value-based approach improves care for both women and health professionals. Research has consistently shown that the two of the most important factors in ensuring positive experiences of childbirth are those promoted by the principle of dignity:

(i) supportive relationships with health professionals; and
(ii) sense of control over decisions made during birth.

(Hodnett, 2002; Waldenström, 2004; Stadlmayr, 2006)
How do human rights improve maternity care?

• (Most) rights are not trumps.

• Recognition of the right, and the values underpinning it, is the starting point for a conversation between a woman and a healthcare professional.

• Human rights law gives professionals a way to frame the process: at a policy level, evidence-based, proportionate decision-making; at an individual level, personalised care.

• Provides a framework in which ethical concerns – including obligations towards the wider community – can be considered.
How do human rights improve maternity care?

• Human rights approach to informed choice clarifies responsibility for the woman and professional.

• If woman is the decision maker in childbirth, she takes responsibility for decisions and subsequent harm, if it is causally connected to her choice.

• Professionals cannot be criticised if they have supported an informed choice regardless of whether that choice is ‘within guidelines’.
Additional resources

- Birthrights training videos
- Birthrights I-Learn module with RCM
- White Ribbon Alliance Charter on Respectful Maternity Care
- Disrepect and Abuse during Childbirth: a webinar by Change, vimeo.com/111680764
Midwifery and Human Rights: A practitioner’s guide
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