

# The Convention on the Rights of Persons with Disabilities (CRPD): Implications for psychiatrists and mental health law

## **Q - What is the CRPD?**

**A** - The CRPD was adopted by the United Nations in 2006 and came into effect in 2008. Its aim is to eliminate discrimination against persons with disabilities so that they enjoy full equality under the law. The CRPD challenges long held beliefs about disability and how it should be treated in the eyes of the law and society as a whole. The UK signed and ratified the convention in 2009 (Ratification means that the State has made a commitment to take legislative, administrative, adjudicative, and programmatic measures to implement the provisions of the convention. The CRPD however is not legally binding in the UK until it is incorporated into domestic law). The UK also ratified an 'optional protocol' meaning that individuals with disabilities or a group of persons with disabilities can directly complain to the UN in the case of violation of their human rights by the state, after having exhausted remedies at the national level.

## **Q - What is the aim of the CRPD?**

**A** - *Article 1 The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.*

*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*

The inherent principles of CRPD are thus of non-discrimination, equal opportunities and promotion of autonomy. The CRPD takes on a social model of disability as opposed to a medical one. The medical model of disability suggests fixing the disability will allow the individual to function like everyone else. The social model places emphasis on overcoming barriers produced by environments, attitudes, laws and policies.

## **Q - Does the definition of disability include those with mental illnesses?**

**A** - People with long term mental illnesses are included; whether those with short term illnesses are included is still up for debate.

## **Q - What is its governance structure?**

**A** - The United Nations has a designated Committee to oversee the CRPD. Participating states have to periodically report to the committee. Ratification of the optional protocol by the UK also means that individuals can complain directly to the Committee. The Committee also periodically may make interpretations of the meaning of particular Articles of the Convention.

**Q - What is the CRPD's legal relationship to UK?**

**A** - It is not legally binding on UK courts like the European Convention of Human Rights but it can be used by domestic courts as a reference literature.

**Q - What are the specific provisions of the CRPD relevant to psychiatry ? And their potential implications?**

**A** - Article 14 (1)b - the existence of a disability shall in no case justify a deprivation of liberty

The mental health act may be deemed incompatible with the CRPD as deprivation of liberty is based on a disability (mental illness). To be non-discriminatory, a law must be 'disability-neutral'.

Article 12 'persons shall enjoy legal capacity on an equal basis with others in all aspects of life'

Substitute decision-making, according to the Committee, needs to be replaced by supported decision-making. Guardianship orders would be deemed incompatible.

12(4)- requirement for safeguards that 'shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person'

This could mean that the current English Mental Capacity Act is not compatible with the CRPD because of the objective element of the best interest's assessment.

Article 17 'right to respect for physical and mental integrity on an equal basis with others'

Involuntary treatment under the mental health act may be deemed non-compatible with the CRPD

**Q - What are the potential implications on UK mental health legislation?**

**A** - If detention as in the case of UK legislation is linked to a disability (mental illness) as in the Mental Health Act 1983 (and amended in 2007) it is almost certain to be judged incompatible with the CRPD when reviewed by the UN Committee. The CRPD may also have similar implications for capacity based laws such as the Mental Capacity Act 2005 (see Essex autonomy project)

**Q - If the mental health laws are deemed incompatible with the CRPD, is the government obliged to change it?**

**A** - Not immediately, but the UK has ratified the CRPD and this may have serious implications for the future development of mental health legislation.

## References

<http://www.un.org/disabilities/convention/conventionfull.shtml> - The UN CRPD

<http://autonomy.essex.ac.uk/uncrpd-report> - The Mental Capacity Act and the CRPD

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