

Case 8: Persons with Disabilities in Institutions

In many countries all over the world parents of children with disabilities are encouraged, and in some cases more or less required, to renounce guardianship of their children and send them to be housed at state-run institutions (or less frequently in private institutions). Once a child is institutionalized, it is very difficult or even impossible for the child to leave. The child's legal authority to make decisions for himself or herself is revoked. Once a person is declared legally incompetent, it is almost impossible to have legal capacity restored, even in adulthood.

These institutions are known to be places where human rights violations occur. Organizations such as Human Rights Watch, Disability Rights International, and the Mental Disability Advocacy Center have monitored such institutions and documented gross misconduct, including neglect, abuse, and violence. Women and girls with disabilities find themselves in especially vulnerable conditions, as watchdog organizations have reported numerous instances of abuse, including sexual assault. In some cases state authorities have even acknowledged these violations, and they have made efforts to improve monitoring and to prosecute perpetrators.

One solution that has been implemented in several countries is the sterilization of girls and women with disabilities. This practice is intended to avoid unwanted pregnancies from rape, but it has been decried by human rights organizations. Especially troubling is the existence of documented cases of sterilization without informed consent. In response, authorities argue that the laws and customs of the state necessitate these extreme measures. In some countries abortion is illegal, and they don't want women to be forced to carry children conceived through rape.

One recent case in India received international attention when a young woman with intellectual disabilities, who had become pregnant as a result of rape, challenged a ruling which would have forced her to have an abortion. In court, the state argued in favor of abortion since the young woman was regarded as legally incompetent and therefore incapable of providing for the child, due not only to her intellectual disability but also to the fact that she resided in an institution. Her lawyers argued that she firmly expressed the desire to keep the baby even though it was conceived as a result of rape.

Study questions:

1. What obligations does society have to people with intellectual disabilities? What is the relationship between the obligation to protect persons from harm, and their right to personal autonomy?
2. Is a declaration of legal incompetence ever justified? If so, under what circumstances?
3. Is it ethically permissible to encourage or require sterilization or abortion as a way of protecting vulnerable women from sexual assault and unwanted pregnancy?
4. How do you think the judge should rule?

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