

Sheela Barse v. Union of India¹:

A Much Needed Reprieve.

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The Indian prison system has been infamous for its apathy towards mentally ill inmates and its total inertia as far as specialist treatment is concerned. In these circumstances, the Supreme Court's recent judgement in the Sheela Barse Case holds out hope for the future. Ram Anand Shankar reviews the judgement.

This land mark judgment represents a successful advancement in public interest litigant jurisprudence. Ms. Sheela Barse, a social activist forwarded to the Supreme Court a copy of her write-up titled "Jailing the mentally ill". The write-up was treated by the Court as a public interest litigation (PIL), under Article 32 of the constitution of India. The write-up exposed the fact that many children and adults who were lunatics, but were not criminals were committed to jails in Calcutta, depriving them of their liberty on the pretext that they were interned for treatment. When produced before the Judicial or Executive Magistrate, an initial assessment was made of their mental health. Thereafter, they were committed to jail without fixing the date of hearing, the case or the duration of detention. Notice was issued to the Government of West Bengal and to the Union of India as respondents. Further, the Court also appointed a Commission², to investigate the various issues raised. Some prominent areas of the Commission's report which brought out the situation in the jails were discussed, and included *inter alia*: (1) The delay in specialist help reaching the patients, as there was no psychiatrist on the permanent staff of any jail. There was normally a time lag of 10 to 15 days before a patient was evaluated; in some cases, patients had not received treatment because the psychiatrist was on leave. A case was documented where a patient was kept in a locked cell for an illness which, with adequate care was treatable in a few days. (2) The lack of specialised human resources; lack of supervision of care; absence of a mental health team (a psychiatrist along with a psychologist, a psychiatrist nurse and a psychiatrist social worker) (3) The fact that there was an excessive deprivation of liberty, more than required for the protection of the mentally ill person or for the society.

The Commission made some recommendations incorporating the need to have managing bodies with senior officers as members; these committees would have a duty to formulate schemes for improving the living and therapeutic conditions, to ensure a living environment in the hospitals. The Commission emphasised that the aim of the improvement schemes was to transform the old

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1 1993 (3) SCALE 417.

2 The Commission was headed by Dr. R. Srinivasa Murthy alongwith Ms. Amita Danda.

custodial institutions into active treatment centres supportive of care in the community. Also, they gave importance to the establishment of state-level rehabilitation centres and in associating voluntary agencies.

The Supreme Court, speaking through Mohan, J. (for himself and for Venkatchaliah, C.J.) expressed the vexatious nature of the problem of treating the unfortunate patients. He said the cases would have to be viewed in a humanitarian spirit. Comparing the situation in England, the judge added that the prison system had developed to take on some treatment functions, despite the intention of the legislature to divert the mentally disordered to more appropriate institutions, as there was a failure to develop suitable alternative institutions.

The court declared the admission of non-criminal mentally ill persons to jails illegal and unconstitutional. It directed that the Judicial Magistrate was to perform functions of examination of the patients and of sending them to places of safe custody hitherto performed by the Executive Magistrate. The Judicial Magistrate, on the advice of a mental health professional/psychiatrist is to send the mentally ill person to the nearest place of treatment and care. Further, the Calcutta High Court was asked to appoint a committee consisting of a mental health professional, a social worker and a law person to evaluate the state of the existing mentally ill in the jails and to make suitable recommendations as to those who could be discharged or needed further rehabilitation in specialised institutions. The Committee's report was to be submitted in two months.³ Also, to implement these recommendations in other states, a copy of the order and the Commission's report was asked to be sent to the Chief Secretary of every state.

Social action through law has got a new impetus with the passing of the above directions. The jurisprudence of PIL has been strengthened by this decision. Until this case, the plight of the mentally ill in jails was pathetic. With the directions being applicable to all the states, the mentally ill will be saved the trauma of being incarcerated in jails, for no wrong doing on their part. The importance of the psychiatrist in treating the mentally ill has finally taken root.⁴ The case further demonstrates the need to have non-governmental organisations associating with these programmes, to help instill public confidence in the functioning of the government and to have more openness in its functioning. It is hoped that mental illness will be treated as a sickness and not as a crime. The Commission's report has demonstrated the apathy with which our governments function towards the sick and the helpless. Only a new realization on the part of the government and of the public at large can provide much needed relief for these unfortunate few in the form of adopting them as a part of our society.

3 Specific directions were issued to the Government of West Bengal to upgrade the hospitals, to set up psychiatric services in all teaching and mental hospitals, to integrate mental health care with the primary health care system and to regulate the admission and discharge of patients from hospitals in accordance with the Committee's recommendations.

4 *R.C. Narayan v. State of Bihar*. 1988 (2) SCALE 965 saw the Supreme Court giving due importance to the role of the psychiatrist for the first time and suitable directions were issued, appointing full time qualified psychiatrists in hospitals.