

SHEELA BARSE
v.
UNION OF INDIA AND ANR.

AUGUST 17, 1993

[M.N. VENKATACHALIAH, CJ., AND S. MOHAN, J.]

Mental Health Act, 1947/Central and State Mental Health Authority Rules, 1990:

Care and custody of mentally ill persons in West Bengal—Whether they can be jailed as non-criminal lunatics—Who should assess the mental state of such persons—Steps to be taken for their treatment and rehabilitation.

The Petitioner, a social activist, forwarded a copy of her write up : Jailing the mentally ill to this Court narrating that many children and adults are committed to jail in Calcutta as lunatics, which deprives them of their liberty on the pretext of treatment. When these persons were produced before the Judicial or the Executive Magistrate of West Bengal an instant assessment of their mental health is made and they are committed to jail, whereafter they are never produced and lose all the contacts with the outside world, while there are no health facilities in jail.

The State of West Bengal averred that in case of Non- Criminal Lunatics, the jails act upon and honour the orders of Court. Giving purportedly a picture of satisfactory conditions, the State narrated the facilities accorded to mentally ill inmates. The Union of India made submissions that the Mental Health, Act, 1987 and the Central and State Mental Health, Authority Rules 1990 were notified on May 22, 1987 and December 29, 1990 respectively. The establishment of Central Mental Health Authority was pleaded, as also that the Central Government has requested the State Governments and the Administration of the Union Territories for establishment of State Mental Health Authorities and confirm appointment of requisite number of expert personnel, so that the Central Government should notify the date on which the said Act will come into force in a particular State/Union Territory.

This Court appointed a Commission of Inquiry which submitted a

A four-part report emphasising upon: Treatment deprivatory consequences of commitment to jail and declared the excessive deprivation of liberty while it suggested the composition of managing bodies to transform the old custodial institutions to active treatment centres supportive of care in the community. It emphasised the establishment of state level rehabilitation centres and the association of voluntary agencies.

Disposing of the petition, this Court

HELD: 1.1 The admission of non-criminal mentally ill persons to jails is illegal and unconstitutional. [571-F]

1.2 Admissions of mentally ill persons to jails in West Bengal be stopped forthwith and that the function of getting them examined be performed by Judicial Magistrate who shall send the person concerned to the nearest place of care and treatment. And will send quarterly reports to High Court setting out details about number of persons screened and sent to safe custody. [571-G-H; 572-A-B]

1.3 The State of West Bengal should take immediate action and issue instructions to implement this Court's directions; order enquiry into the death of 19 persons in Dum Dum Central Jail upgrade mental hospitals immediately, besides setting up of psychiatric services in all teaching and district hospitals and integrate mental health care with the primary health care system. [572-C-E]

1.4 The Health Secretary of the State will also send quarterly report on the steps taken to implement each of the directions and regulate the admission to discharge from the mental hospitals of mentally ill persons by a fresh set of instructions in accordance with the recommendations made in the report of the Commission. [572-F-H]

1.5 The High Court of Judicature at Calcutta was requested to appoint a Committee of a mental health/professional/psychiatrist, a social worker and a law person to evaluate the State of the existing mentally ill in jail, to discharge such of those persons found fit and ensure their return to their homes and/or their rehabilitation, even as to move out such of those persons requiring continued treatment and care from out of the Jails to the nearest places of treatment and care. [573-A-C]

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (CRL.) A
No. 237 of 1989.

Under Article 32 of the Constitution of India.

S. Muralidhar for the petitioner.

Santosh Hegde, V.C. Mahajan, D.K. Sinha, J.R. Das, Mukul Mudgul,
R.S. Suri, T.C. Sharma, Ms. Anil Katiyar and Ms. A. Subhashini for the
respondent. B

The Judgment of the Court was delivered by

MOHAN, J. This Writ Petition has been preferred by Ms. Sheela
Barse, a social activist. She has forwarded a copy of the write-up under the
title "Jailing the mentally ill". This write-up was published by her. C

The said write-up narrates the following:-

Many children and adults are committed to jail in Calcutta as
lunatics. In fact they are not mentally ill at all. Some are normal, some
temporarily under stress of undergoing a phases of mental disturbance, and
a few are mentally retarded. Once they are jailed, they are all categorised
as "Non-criminal Lunatics". This jailing deprives them of their liberty on
the pretext that he is interned for treatment. When these persons were
produced before the Judicial or the Executive Magistrate of West Bengal
and instant assessment is made of their mental health and they are com-
mitted to jail without fixing the case, date of hearing or the duration of
detention. Thereafter they are never produced before the Magistrate.
During their confinement these persons lost all the contacts to the outside
world, more often than not the magistrate purporting to act under section
13 of the Lunacy Act (Which Act has been repealed) arrogating them-
selves a power which they do not have. D E F

There are no health facilities inside the jail. Their conditions are
miserable. The apathy on the part of the various departments of the State
Government is a matter of regret. Having failed to get the necessary
redressal from the authorities this petition has come up to be moved.
Having regard to the nature of allegations the matter being of a great
public importance, requiring judicial notice, this court ordered to issue
notice to the State of Bengal and Union of India G H

A The State of West Bengal has filed a counter. It is averred that the jails in West Bengal receive prisoners only on the authority of a writ/warrant/custody etc. issued by a competent court under seal and signature of a Magistrate or Judge for detention in such jails. In case of Non-criminal Lunatics, also these jail act upon and honour the orders of the court.

B "The Medical Officers of the jails look after these inmates sent by the courts and also observe their mental condition and submit report to the court, as desired. There are visiting Psychiatrists in Central Jails but in case of other smaller jails the Medical Officer of the jail performs this function. Jails are meant for lodging criminals charges under the Indian Penal Code, Criminal Penal Code and other law of the land. Jails are not equipped with men and material to lodge Non-criminal Lunatics permanently. However, with the financial constraints and available men and materials, every possible effort is made to look after the Non-criminal Lunatics so long they are inside the jail.

D Alipore Special Jail is still functioning as a jail under the Prisons Directorate and this Jail is lodging only curable and cured Non-criminal Lunatics who are looked after and treated by well-known visiting psychiatrists, medical officers, part-time psychologist and female nursing staff. There are many cases where cured Non-criminal Lunatics have been released to the care of their relatives.

E Most of the Non-criminal Lunatics, mentally ill-persons are lodged in Presidency jail, Dum Dum Central Jail, Alipore Special Jail, Alipore Central Jail, Berhampore Central Jail and Midnapore Central Jail. Only a few such persons are detained in other districts, special and Sub-jails.

F Most of the Non-criminal Lunatics, mentally ill-persons are lodged in Presidency jail, Dum Dum Central Jail, Alipore Special Jail, Alipore Central Jail, Berhampore Central Jail and Midnapore Central Jail. Only a few such persons are detained in other districts, special and Sub-jails.

G Non-criminal Lunatics are supplied with wearing apparels including bedding while in jails. Male inmates are provided with Jangia Pajamas and Kurtas and female inmates are provided with Sarees, Blouse and other clothes. They are also provided with Blankets Bed Sheets and Napkins for their daily use.

H In Presidency Jail, Calcutta, a Television Set has also been provided inside the Non-criminal Lunatic ward for their recreation.

tion. Interview and letter writing facilities are also extended to them very liberally. A

These Non-criminal Lunatics are also provided with food in the same scale as that of the ordinary undertrial prisoners. In addition, they are also provided with extra diet and medical diet consisting of loaf, meat, egg, butter, milk, fruit, curd etc. on the advice of the Medical Officer." B

The Union of India has filed a counter-affidavit for the limited purpose of placing a record, the date on which the Mental Health Act of 1987 and the rules made thereunder have come into force. C

"In this behalf, it is submitted the Mental Health Act, 1987 was notified on 22.5.1987. Further, the Central and State Mental Health Authority Rules 1990 were notified on 29.12.1990.

It is further submitted that the Central Government has also established and constituted an Authority called Central Mental Health Authority under the aforesaid rules. It is further submitted that the Central Government has requested the State Governments and the Administration of Union Territories vide letter date 10.11.1981 to take necessary steps for constituting and establishing the State Mental Health Authority in accordance with the aforesaid rules and appointments or visitors as required under the Act. D E

It is further submitted that after the State Government and Administration of Union Territories confirm having established the State Mental Health Authorities, appointed not less than 5 visitors for each Psychiatric Hospital/Nursing Home and appointed as licensing authority, as required under the act the Central Government shall notify the date on which the said Act will come into force date a particular State/Union Territories. F

This Court appointed a Commission by order dated 16th June, 1992. In accordance with that order, the Commission had gone into the matter at some great length the substantive part of the report is presented in to four parts:- G

(1) Introductory (sections 1 to 6) H

- A (2) Report of the field work (sections 7 to 8)
- (3) Conclusions emerging from the investigations (section 9)
- (4) Recommendations (section 10 to 12)

B As to the concept of Non-criminal Lunatics, it is stated in the report as under:-

C "The mentally ill housed in jails are referred to as "Non-criminal Lunatics". This term is meant to include persons who are sent to jail for medical observation to determine the state of mind of the individual (section 16 Indian Lunacy Act 1912 hereinafter ILA) and persons who are to be kept in a place of safe custody pending removal to mental hospital (s.23 ILA). The procedure of medical observation is either required for wandering and dangerous mentally ill (s.13 ILA) or for mentally ill persons who are cruelly treated and not under proper care and custody (s.15 ILA). Apart from these statutory categories any mentally ill person who is admitted in jail and is not a criminal lunatic is in prison terminology referred to as "Non-criminal lunatic"

E After analysing the position in the various jails about the facilities available for treatment, it is stated as under:-

Treatment deprivatory consequences of commitment to jail:-

(1) Delay in specialist help reaching the patient:-

F Mentally ill are kept in varying numbers in the various central district and subjails in West Bengal. No Psychiatrist is on the permanent staff of any jail. Jails only have consultancy arrangements either with a psychiatrist visiting the jail (as is the procedure in the central jails and Krishnanagar) or the patient is sent to the District hospital (Purulia) or medical college (Bankura).

G Even in the jails where the psychiatrist visits the jail such visits are not daily but at a frequency of 4 times a week (Presidency) or once in a fortnight (Dum Dum) or even once in a month (Midnapore). At this frequency a time lag of 10-15 days can easily occur before a patient is evaluated. Thus in Dum Dum Central jail we

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met a patient who had been in the jail for more than 15 days but who had neither been evaluated nor had received any treatment because the psychiatrist had been on leave during that period. A

If the patient has to be sent to the hospital for evaluation, delay may occur because of lack of vehicle or escort. Thus in Purulia District Jail we meet Suparna Benerjee who was brought to Purulia District jail on 13.9.1992. Though she was actively disturbed and suffering from mania she was not examined for three days. On 16.9.1992 she was taken to the Sadar Hospital where she was examined and prescribed medicines. Even on the next day i.e. 17.9.92 the patient could not get drugs because the doctor on duty was on leave. There was no other mechanism for the distribution of drugs in the jail since the post of pharmacist was vacant. The result was the patient was kept in a locked cell for an illness which with adequate care is totally treatable within a few days. B C

(2) *Lack of specialised human resource:-* D

Even the delayed treatment mechanism only operates in districts where specialist facilities exist. The specialised psychiatrist help is not available in the districts of West Dinajpur, Maldah, Birbhum, Bardhaman. In Cooch Behar and Jalpaiguri though postings for psychiatrists exist there is no psychiatrist in position. Thus the mentally ill persons detained in jails in these districts receive no treatment whatsoever. E

(3) *Lack of supervision of care:-* F

Currently there are no methods for the supervision of the care provided to the mentally ill. As a result patients are diagnosed after a single examination. They do not receive any review nor is any revaluation of the developing mental problems undertaken. For example, in Purulia jail Mr. Padmalochan Das was admitted on 11.8.1992, and was diagnosed to be subnormal. Since this condition is untreatable he was not on any treatment. During the visit of the Commission he was found to be severely depressed, growing with suicidal ideas and had a definite history of both past and current mental illness. Since there is no system of re-evaluation this patient was not receiving any treatment for the oncoming H G

A mental illness problems.

(4) *Absence of mental health team:-*

B Treatment for mental illness is not provided only by psychiatrists. Such treatment has to be provided by a mental health team of clinical psychologists, psychiatric nurses and social workers in the jails of West Bengal other than a visiting psychiatrist there are no other trained personnel for the treatment of mentally ill persons.

C The only place where there are nurses is the Alipore special jail Calcutta which has been renamed the Institute of Mental Health. At all other jails life convicts give the medicines to the patients when they have no training or expertise for undertaking the job. Even at the Institute where nurses are on the staff nursing care is not available at night since jail rules do not permit women to be on the premises after lock up.

(5) *Lack of variety or treatment facilities necessary for mental health care:-*

E The treatment facilities available in the jail are extremely limited. Only one or two drugs like chloropromazine and nitrozipam are available. Electro-convulsive thereby cannot be provided in jail.

Commission declares the *Excessive deprivation of liberty:-*

F When a mentally ill person is sent to jail he is sent to an institution which is essentially geared towards security-security of society from the dangerous person it house and safety of the inmates from each other. The mentally ill being inducted into this set up are only managed as dangerous individuals and not as sick persons. This results in deprivation of liberty in several ways which is more excessive than is required either for the protection of the mentally ill person or for the safety of society."

H Various remedial methods are suggested. The Improvement Scheme for Mental Hospitals are outlined as follows:-

It is suggested that managing bodies should be set up for all the mental hospitals in West Bengal. The composition of the bodies could be according to the Ranchi model i.e., a consenting sitting judge from the Calcutta High Court or a District Judge nominated by the Chief Justice of Calcutta should be chairperson. A

Senior Officers from the departments of health, welfare, prisons, police along with a professor of psychiatry from a teaching hospital could be members. And the medical Superintendent of each hospital could function as the member secretary of the Committee. B

These committees will be under a duty to formulate schemes for improving both the living and therapeutic conditions in the mental hospitals. C

Without being exhaustive initially the improvement schemes will need to ensure that the living environment of the hospitals. D

The aim of the improvement schemes however should not just be to remove the deficiencies of the old hospitals but to create and to transform these old custodial institutions to active treatment centres supportive of care in the community." E

The establishment of State level rehabilitation centres and the association of voluntary agencies is emphasised by the Commissioners. (Dr. R. Srinivasa Murthy and Ms. Amita Dhanda)

From the above, it is clear the problem presented before us is a vexed one of treating these unfortunate persons whose cases will have to be viewed in a humanitarian spirit. In England the position as obtainable is stated in *Imprisonment in England and Wales* Christopher Harding Bill Hines Richard Ireland and Philip Rawlings as under:- F

"The Mental Deficiency Act of 1913 diverted the so-called mental defectives (retarded persons) from the penal system: it was provided that if such persons were convicted, they could be placed in an appropriate institution, such as Rampton and Moss Side hospitals, or under guardianship. This approach provided the model for the wider system eventually adopted under the Mental Health Act of 1959. Section 60 of that Act enabled courts to order H

A that convicted offenders be treated in a hospital, if there was evidence of mental disorder, as defined in the Act. Therefore, even though convicted, and perhaps in the some cases the kind of persons who ought for reasons of public safety to be held insecure conditions, mentally disordered offenders could then be diverted straightaway from the prison system. The problem of the 'dangerous patient' was provided for in section 65, which enabled a court to couple a hospital order with a restriction order, the latter making release from hospital dependent on the Home Officer's consent. Since 1959, the courts have become acclimatised to this different form of disposal, gradually coming to think in terms of treatment rather than punishment for such offenders. But the procedures laid down in the mental health legislation of 1959 and 1983 still leave certain categories of disordered person to be dealt with by the prison system. The disorder must be of a kind listed in the legislation (broadly, mental illness, retardation or psychopathic disorder) and must be susceptible to treatment. Moreover, some patients need to be held in secure conditions and there have been a limited number of secure hospital places (at Broadmoor, established in 1863, and Rampton and Moss Side, opened respectively in 1910 and 1919, although both catering mostly for the mentally retarded before 1959). As a result, some seriously disordered offenders may find themselves in prison, for reasons of security, if only temporarily. In addition, in recent years many hospitals have been unwilling to accept psychopathic offender since it is open to doubt whether there is any effective treatment for many who suffer from this condition. For those psychopaths who are aggressive and violent, the prison system has been used to a large extent to provide a convenient form of secure institution. It has therefore, been necessary for the prison authorities to develop suitable accommodation and a certain level of psychiatric and therapeutic care, if not treatment.

G In some respects the prison authorities have in the past been happy to take on such a rule. In the earlier years of this century, the reformist tradition in the penal system quite naturally took on board some of the methods of treatment being worked out in the fields of psychology, psychiatry and psychotherapy. In 1932 the Departmental Committees on Persistent Offenders commented

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that: 'there is reason to believe that certain delinquents may be amenable to psychological treatment A medical psychologist should be attached to one or more penal establishments to carry out psychological treatment in selected cases.

In due course, psychiatric treatment became an integral part of the prison sentence for some categories of prisoner and in the post-war period staff with expertise in this kind of treatment were brought into the prison service and centres for psychiatric treatment were set up in some prisons, notably Wakefield and Wormwood Scrubs. For more seriously disturbed prisoners, a special prison was opened in 1962 at Grendon in Buckinghamshire, mainly to cater for the more moderate kind of psychopath, and comprising a therapeutic regime within conditions of maximum security. There is also a wing at Parkhurst Prison for the most seriously disturbed prisoners, where the object is to minimise violent and aggressive behaviour rather than apply a positive regime of treatment.

The prison system has therefore come to take on some treatment functions, despite the intention of the legislation of 1913 and 1959 to divert the mentally disordered to more appropriate institutions. This has come about more through the failure to develop suitable alternative institutions than through the conviction that a prison is the best place for some categories of disordered offender."

On an anxious consideration of the matter, we issue the following directions:-

(1) It is declared that admission of *non-criminal mentally ill persons* to jails is illegal and unconstitutional.

(2) It is directed that admissions of mentally ill persons to jails in West Bengal on any ground whatsoever be stopped forthwith and the State of West Bengal is directed to issue instructions to this effect immediately.

(3) It is directed that the function of getting mentally ill persons examined and sent to places of safe custody hitherto performed by Executive Magistrate shall hereafter be performed only by Judicial Magistrates.

A (4) The Judicial Magistrate will upon a mentally ill person being produced, have him or her examined by a Mental Health Professional/Psychiatrist and if advised by such MHP/Psychiatrist send the mentally ill person to the nearest place of treatment and care.

B (5) The Judicial Magistrate will send reports every quarter to the High Court setting out the number of cases of persons sought to be screened and sent to places of safe custody and action taken by the judicial Magistrate thereon.

(6) The Government of West Bengal is hereby directed to:-

C (i) to take immediate action and issue instructions in the implementation of the directions given herein above.

D (ii) order enquiry into the death of 19 persons in the Dum Dum Central Jail in December, 1991 and take action to rectify the factors that resulted in such a calamity. A copy of report of the enquiry and the details of the step taken thereon to be placed before the court given a period of two months from today.

(iii) take simultaneous immediate steps for:

E (a) immediate upgradation of mental hospitals

(b) setting up of psychiatric services in all teaching and district hospital. This will including filling up the posts of psychiatrist in these places.

F (c) Integrating mental health care with the primary health care system.

G (iv) Regulate the admission to discharge from the mental hospitals in West Bengal of mentally ill persons by a fresh set of instructions in accordance with the recommendations made in the report of the Commissioners. (guideline 10.2.9 to 10.1.13 at para 119-123)

(v) The Health Secretary of the State of West Bengal will send quarterly report to this Court on the steps taken to implement each of the directions given in this Order. This will be in the form of an Affidavit.

H Any difficulty encountered in the implementation of the order will

be forthwith brought to the notice of this Court.

(7) The High Court of judicature at Calcutta is requested to appoint a committee of a mental health professional/psychiatrist, a Social worker and a Law Person to evaluate the state of the existing mentally ill in jails. The committee will in a report make detailed recommendations to:-

(a) discharge such of those persons found fit and ensure their return to their homes and/or their rehabilitation.

(b) move out such of those persons requiring continued treatment and care from out of the Jails, to the nearest places of treatment and care.

The report will be submitted within two months of its appointment by the Committee to the High Court with a copy to this Court. The High Court is requested to monitor, in such manner as it deems fit, the implementation of the recommendations of the Committee. This court will be kept informed of the steps taken in this regard.

Though the report of the Commission relates to only State of West Bengal in order that these recommendations are properly implemented in other States as well, it is hereby directed:-

1. Notice shall be sent to the Chief Secretary of every State together with-

(a) a copy of the order dated 16.6.1992 passed by this Court.

(b) a copy of the report submitted by the Commissioners (Volume-I)

The Chief Secretary is hereby directed to indicate to the Standing Counsel of the State in the Supreme Court:-

(a) the facts and figures in respect of every item mentioned in the order dated 16.6.92 of this Court;

(b) the response of State Government to the recommendations and plan of action suggested in the report of the Commissioners;

(c) the willingness of the State Government in taking action in line with recommendations made by the Commissioners in their report.

- A** (3) The Chief Secretary shall respond to this notice within a period of 3 months and this time limit will be adhered to strictly.

In addition to the service of notice to the Chief Secretary, notice will also be served upon the standing Counsel of the State to ensure strict compliance with this order.

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The Writ Petition is disposed of accordingly.

S.P.S.

Petition disposed of.