

SHEELA BARSE

v.

STATE OF MAHARASHTRA

February 15, 1983

[P.N. BHAGWATI, R.S. PATHAK AND
AMARENDRA NATH SEN, JJ.]

*Legal Aid to the poor—Importance of legal aid to the poor explained—
Directions given to Prison authorities and police on providing legal aid to the
poor prisoners.*

The petitioner, a journalist, in her letter addressed to this Court stated that five out of fifteen women prisoners interviewed by her in the Bombay Central Jail alleged that they had been assaulted by the police in the police lock up and two of them in particular alleged that they had been assaulted and tortured in the lock up. Treating the letter as a writ petition the Court issued notices to all concerned to show cause why the writ petition should not be allowed. In the meanwhile the Director of the College of Social Work, Nirmala Niketan, Bombay was directed to interview the women prisoners without any one else being present and ascertain whether the allegations made to the petitioner were correct. The Director, in her report, stated among other things that there was no adequate arrangement for providing legal assistance to women prisoners and that two prisoners who were foreign nationals complained that a lawyer duped and defrauded them and misappropriated almost half of their belongings and jewellery on the plea that he was retaining them for payment of his fees.

Disposing of the petition the court gave the following directions :

Legal assistance to a poor or indigent accused, arrested and put in jeopardy of his life or personal liberty, is a constitutional imperative mandated not only by Art. 39A but also by Articles 14 and 21 of the Constitution. It is a necessary *sine qua non* of justice and where it is not provided, injustice is likely to result and every act of injustice corrodes the foundations of democracy and rule of law. It is possible that a prisoner lodged in a jail does not know to whom he can turn for help to indicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill-treatment, oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated, it may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is therefore essential that legal assistance must be made available to prisoners in jails whether they be under-trials or convicted prisoners.

[341 F-H, 342 A-C]

A The Inspector General of Prisons in Maharashtra should issue a circular to all Superintendents of Jails in Maharashtra requiring them to send to the Legal Aid Committee of each district in which the jail is situated : (i) a list of all under-trial prisoners giving the date of entry, the nature of the offence showing separately male and female prisoners and (ii) a list giving the particulars of persons arrested on suspicion under s. 41 of the Code of Criminal Procedure who have been in jail beyond a period of 15 days. The Circular should also contain directions : (i) to provide facilities to lawyers nominated by the concerned district Legal Aid Committee to enter the jail and to interview the prisoners who have expressed their desire to have their assistance ; (ii) to furnish to the lawyers nominated by the Legal Aid Committee whatever information is required by them in regard to the prisoners in jail ; (iii) to put up notices at prominent places in the jail that lawyers nominated by the concerned District Legal Aid Committee would be visiting the jail on particular days and that prisoners who wanted their assistance could avail of their counselling services ; (iv) to allow any prisoner to meet such lawyers. Such interview should be within sight but out of hearing of any jail official. [343 D-E, G-H, 344 A-D]

D The Maharashtra State Board of Legal Aid should advise and instruct the District Legal Aid Committees to nominate a few selected lawyers to visit the jail or jails in the district once in a fortnight to ascertain whether the law laid down by this Court and the High Court in this respect is being properly and effectively implemented and to interview the prisoners who express their desire to obtain legal assistance. The State Board should call for periodic reports from the district legal aid committees to ensure that these directions are being properly carried out. [344 E-H]

E The Court has given the following further directions :

(i) Four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in a police lock up in which male suspects are detained. [345 E-F]

(ii) Interrogation of females should be carried out only [in the presence of female police officers/constables. [345 G]

G (iii) A person arrested must be immediately informed of the grounds of his arrest. It must immediately be made known to the arrested person that he is entitled to apply for bail. The Maharashtra State Board of Legal Aid and Advice should forthwith get a pamphlet prepared setting out the legal rights of an arrested person. The pamphlets should be in Marathi, Hindi and English. Printed copies of the pamphlets in all these languages should be affixed in each cell in every police lock up. As soon as the arrested person is brought to the police station, the pamphlet should be read out to him in any of the languages which he understands. [345 H, 346 A-C]

H (iv) Whenever a person is arrested by the police and taken to the police lock up, the police should immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee which should take immediate steps to

provide legal assistance to him at State cost provided he is willing to accept such legal assistance. [346 D-E] **A**

(v) In the city of Bombay, a City Sessions Judge, nominated by the principal Judge of the City Civil Court, preferably a lady Judge if there is one, shall make surprise visits to police lock ups in the city periodically with a view to providing the arrested persons an opportunity to air their grievances and for ascertaining the conditions in the police lock ups, whether the requisite facilities are being provided, whether the provisions of law are being observed and that these directions are being carried out. If it is found that there are any lapses on the part of the police authorities, the City Sessions Judge shall bring them to the notice of the Commissioner of Police and if necessary to the notice of the Home Department. If even this approach fails, then the City Sessions Judge may draw the attention of the Chief Justice of the High Court of Maharashtra to such lapses. This direction in regard to police lock ups at the district headquarters shall be carried out by the Sessions Judge of the district concerned. [346 F-H, 347 A] **B**

(vi) As soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest. [347 B-C] **C**

(vii) The magistrate before whom an arrested person is produced shall enquire from him whether he has any complaint of torture or maltreatment in police custody and inform him that he has a right under section 54 of the Code of Criminal Procedure 1973 to be medically examined. [347 C-D] **D**

The Court made the following observations : **E**

The profession of law is a noble profession. A lawyer owes a duty to the society to help people in distress more so when those in distress are women and in jail. Lawyers must positively reach up to those sections of humanity who are poor, illiterate and ignorant and who, when they are placed in a crisis such as an accusation of crime or arrest or imprisonment, do not know what to do or where to go or to whom to turn. If lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and the large masses of people in the country would lose faith in lawyers and that would be destructive of democracy and the rule of law. [342 F-H, 343 A-B] **F**

ORIGINAL JURISDICTION ; Writ Petition (Cri.) Nos. 1053-1054 of 1982. **G**

(Under Article 32 of the Constitution of India.

Khursheed Ahmed for the Petitioner. **H**

K.G. Bhagat Addl. Sol. General, *V.B. Joshi* and *M.N. Shroff* for the Respondent.

A The Judgment of the Court was delivered by

B BHAGWATI, J. This writ petition is based on a letter addressed by Sheela Barse, a journalist, complaining of custodial violence to women prisoners whilst confined in the police lock up in the city of Bombay. The petitioner stated in her letter that she interviewed fifteen women prisoners in the Bombay Central Jail with the permission of the Inspector General of Prisons between 11 and 17th May, 1982 and five out of them told her that they had been assaulted by the police in the police lock up. Of these five who complained of having been assaulted by the police, the petitioner particularly mentioned the cases of two, namely, Devamma and Pushpa Paen who were allegedly assaulted and tortured whilst they were in the police lock up. It is not necessary for the purpose of this writ petition to go into the various allegations in regard to the ill-treatment meted out to the women prisoners in the police lock up and particularly the torture and beating to which Devamma and Pushpa Paen were said to have been subjected because we do not propose to investigate into the correctness of these allegations which have been disputed on behalf of the State of Maharashtra. But, since these allegations were made by the women prisoners interviewed by the petitioner and particularly by Devamma and Pushpa Paen and there was no reason to believe that a journalist like the petitioner would invent or fabricate such allegations if they were not made to her by the women prisoners, this Court treated the letter of the petitioner as a writ petition and issued notice to the State of Maharashtra, Inspector General of Prisons, Maharashtra, Superintendent, Bombay Central Jail and the Inspector General of Police, Maharashtra calling upon them to show cause why the writ petition should not be allowed. It appears that on the returnable date of the show cause notice no affidavit was filed on behalf of any of the parties to whom show cause notice was issued and this Court therefore adjourned the hearing of the writ petition to enable the State of Maharashtra and other parties to file an affidavit in reply to the averments made in the letter of the petitioner. This Court also directed that in the meanwhile Dr. (Miss) A.R. Desai, Director of College of Social Work, Nirmala Niketan, Bombay will visit the Bombay Central Jail and interview women prisoners lodged there including Devamma and Pushpa Paen without any one else being present at the time of interview and ascertain whether they had been subjected to any torture or ill-treatment and submit a report to this Court on or before 30th August, 1982. The State Government and the Inspector General of Prisons were directed to provide all

facilities to Dr. Miss A.R. Desai to carry out this assignment entrusted to her. The object of assigning this commission to Dr. Miss A.R. Desai was to ascertain whether allegations of torture and ill-treatment as set out in the letter of the petitioner were, in fact, made by the women prisoners including Devamma and Pushpa Paen to the petitioner and what was the truth in regard to such allegations. Pursuant to the order made by this Court, Dr. Miss A.R. Desai visited Bombay Central prison and after interviewing women prisoners lodged there, made a detailed report to this Court. The Report is a highly interesting and instructive socio-legal document which provides an insight into the problems and difficulties facing women prisoners and we must express our sense of gratitude to Dr. Miss A.R. Desai for the trouble taken by her in submitting such a wonderfully thorough and perceptive report. We are not concerned here directly with the conditions prevailing in the Bombay Central Jail or other jails in the State of Maharashtra because the primary question which is raised in the letter of the petitioner relates to the safety and security of women prisoners in police lock up and their protection against torture and ill-treatment. But even so we would strongly recommend to the Inspector General of Prisons, Maharashtra that he may have a look at this Report made by Dr. Miss A.R. Desai and consider what further steps are necessary to be taken in order to improve the conditions in the Bombay Central Jail and other jails in the State of Maharashtra and to make life for the women prisoners more easily bearable by them. There is only one matter about which we would like to give directions in this writ petition and that is in regard to the need to provide legal assistance not only to women prisoners but to all prisoners lodged in the jails in the State of Maharashtra. We have already had occasion to point out in several decisions given by this Court that legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39 but also by Articles 14 and 21 of the Constitution. It is a necessary *sine qua non* of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law, because nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in the legal process and a feeling begins to overtake them that democracy and rule of law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful

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A and to protect the establishment and the vested interests. Imagine
the helpless condition of a prisoner who is lodged in a jail who does
not know to whom he can turn for help in order to vindicate his
innocence or defend his constitutional or legal rights or to protect
himself against torture and ill-treatment or oppression and harass-
ment at the hands of his custodians. It is also possible that he
B or the members of his family may have other problems where legal
assistance is required but by reason of his being incarcerated, it may
be difficult if not impossible for him or the members of his family
to obtain proper legal advice or aid. It is therefore absolutely
essential that legal assistance must be made available to prisoners in
C jails whether they be under-trial or convicted prisoners.

The Report of Dr. Miss A.R. Desai shows that there is no
adequate arrangement for providing legal assistance to women
prisoners and we dare say the situation which prevails in the matter
of providing legal assistance in the case of women prisoners must
D also be the same in regard to male prisoners. It is pointed out in
the Report of Dr. Miss A.R. Desai that two prisoners in the
Bombay Central Jail, one a German national and the other a Thai
national were duped and defrauded by a lawyer, named Mohan
Ajwani who misappropriated almost half the belongings of the
German national and the jewellery of the Thai national on the plea
E that he was retaining such belongings and jewellery for payment of
his fees. We do not know whether this allegation made by these
two German and Thai women prisoners is true or not but, if true,
it is a matter of great shame for the legal profession and it needs to
be thoroughly investigated. The profession of law is a noble
profession which has always regarded itself as a branch of social
F service and a lawyer owes a duty to the society to help people in
distress and more so when those in distress are women and in jail.
Lawyers must realise that law is not a pleasant retreat where we are
concerned merely with mechanical interpretation of rules made by
the legislature but it is a teeming open ended avenue through which
G most of the traffic of human existence passes. There are many
casualties of this traffic and it is the function of the legal profession
to help these casualties in a spirit of dedication and service. It is
for the lawyers to minimise the numbers of those casualties who
still go without legal assistance. The lawyers must positively reach
H out to those sections of humanity who are poor, illiterate and
ignorant and who, when they are placed in a crisis such as an
accusation of crime or arrest or imprisonment, do not know what

to do or where to go or to whom to turn. If lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and large masses of people in the country would lose faith in lawyers and that would be destructive of democracy and rule of law. If it is true—that these two German and Thai women prisoners were treated by Mohan Ajwani in the manner alleged by them—and this is a question on which we do not wish to express any opinion *ex parte*—it deserves the strongest condemnation. We would therefore direct that the allegations made by the two German and Thai women prisoners as set out in paragraph 9.2 of the Report of Dr. Miss A.R. Desai be referred to the Maharashtra State Bar Council for taking such action as may be deemed fit.

But, this incident highlights the need for setting up a machinery for providing legal assistance to prisoners in jails. There is fortunately a legal aid organisation in the State of Maharashtra headed by the Maharashtra State Board of Legal Aid and Advice which has set up committees at the High Court and district levels. We would therefore direct the Inspector General of Prisons in Maharashtra to issue a circular to all Superintendents of Police in Maharashtra requiring them—

- (1) to send a list of all under-trial prisoners to the Legal Aid Committee of the district in which the jail is situate giving particulars of the date of entry of the under-trial prisoners in the jail and to the extent possible, of the offences with which they are charged and showing separately male prisoners and female prisoners.
- (2) to furnish to the concerned District Legal Aid Committee a list giving particulars of the persons arrested on suspicion under section 41 of the Code of Criminal Procedure who have been in jail beyond a period of 15 days.
- (3) to provide facilities to the lawyers nominated by the concerned District Legal Aid Committee to enter the jail and to interview the prisoners who have expressed their desire to have their assistance.

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- (4) to furnish to the lawyersⁿ nominated by the concerned District Legal Aid Committee whatever information is required by them in regard to the prisoners in jail.
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- (5) to put up notices at prominent places in the jail that lawyers nominated by the concerned District Legal Aid Committee would be visiting the jail on particular days and that any prisoner who desires to have their assistance can meet them and avail of their counselling services; and
- C**
- (6) to allow any prisoner who desires to meet the lawyers nominated by the concerned District Legal Aid Committee to interview and meet such lawyers regarding any matter for which he requires legal assistance and such interview should be within sight but out of hearing of any jail official.

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We would also direct that in order to effectively carry out these directions which are being given by us to the Inspector General of Prisons, the Maharashtra State Board of Legal Aid and Advice will instruct the District Legal Aid Committees of the districts in which jails are situate to nominate a couple of selected

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lawyers practising in the district court to visit the jail or jails in the district atleast once in a fortnight with a view to ascertaining whether the law laid down by the Supreme Court and the High Court of Maharashtra in regard to the rights of prisoners including the right to apply for bail and the right to legal aid is being properly and effectively implemented and

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to interview the prisoners who have expressed their desire to obtain legal assistance and to provide them such legal assistance as may be necessary for the purpose of applying for release on bail or parole and ensuring them adequate legal representation in courts, including filing or preparation of appeals or revision applications against convictions and legal aid and advice in regard to any other

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problems which may be facing them or the members of their families. The Maharashtra State Board of Legal Aid & Advice will call for periodic reports from the district legal aid committees with a view to ensuring that these directions given by us are being properly carried out. We would also direct the Maharashtra State

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Board of Legal Aid and Advice to pay an honorarium of Rs. 25/- per lawyer for every visit to the jail together with reasonable travelling expenses from the court house to jail and back. These directions

in so far as the city of Bombay is concerned, shall be carried out by substituting the High Court Legal Aid Committee for the District Legal Aid Committee, since there is no District Legal aid committee in the city of Bombay but the Legal Aid Programme is carried out by the High Court Legal Aid Committee. We may point out that this procedure is being followed with immense benefit to the prisoners in jails by the Tamil Nadu State Legal Aid & Advice Board.

We may now take up the question as to how protection can be accorded to the women prisoners in police lock ups. We put forward several suggestions to the learned advocate appearing on behalf of the petitioner and the State of Maharashtra in the course of the hearing and there was a meaningful and constructive debate in court. The State of Maharashtra offered its full co-operation to the Court in laying down the guidelines which should be followed so far as women prisoners in police lock ups are concerned and most of the as suggestions made by us were readily accepted by the State of Maharashtra. We propose to give the following directions as a result of meaningful and constructive debate in court in regard to various aspects of the question argued before us.

- (i) We would direct that four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in police lock up in which male suspects are detained. The State of Maharashtra has intimated to us that there are already three cells where female suspects are kept and are guarded by female constables and has assured the Court that two more cells with similar arrangements will be provided exclusively for female suspects.
- (ii) We would further direct that interrogation of females should be carried out only in the presence of female police officers/constables.
- (ii) Whenever a person is arrested by the police without warrant, he must be immediately informed of the the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested

A person that he is entitled to apply for bail. The Maharashtra State Board of Legal Aid & Advice will forthwith get a pamphlet prepared setting out the legal rights of an arrested person and the State of Maharashtra will bring out sufficient number of printed copies of the pamphlet in Marathi which is the language of the people in the State of Maharashtra as also in Hindi and English and printed copies of the pamphlet in all the three languages shall be affixed in each cell in every police lock up and shall be read out to the arrested person in any of the three languages which he understands as soon as he is brought to the police station.

(iv) We would also direct that whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance. The State Government will provide necessary funds to the concerned Legal Aid Committee for carrying out this direction.

(v) We would direct that in the city of Bombay, a City Sessions Judge, to be nominated by the principal Judge of the City Civil Court, preferably a lady Judge, if there is one, shall make surprise visits to police lock ups in the city periodically with a view to providing the arrested persons an opportunity to air their grievances and ascertaining what are the conditions in the police lock ups and whether the requisite facilities are being provided and the provisions of law are being observed and the directions given by us are being carried out. If it is found as a result of inspection that there are any lapses on the part of the police authorities, the City Sessions Judge shall bring them to the notice of the Commissioner of Police and if necessary to the notice of the Home Department and if even this approach fails, the City Sessions Judge may draw the attention of the Chief Justice of the High Court of Maharashtra to such lapses. This direc-

tion in regard to police lock ups at the districts head quarters, shall be carried out by the Sessions Judge of the district concerned.

- (vi) We would direct that as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest ; and lastly
- (vii) We would direct that the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or mal-treatment in police custody and inform him that he has right under section 54 of the Code of Criminal Procedure 1973 to be medically examined. We are aware that section 54 of the Code of Criminal Procedure 1973 undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. But very often the arrested person is not aware of this right and on account of his ignorance, he is unable to exercise this right even though he may have been tortured or malterated by the police in police lock up. It is for this reason that we are giving a specific direction requiring the magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or mal-treatment in police custody.

We have no doubt that if these directions which are being given by us are carried out both in letter and spirit, they will afford considerable protection to prisoners in police lock ups and save them from possible torture or ill-treatment. The writ petition will stand disposed of in terms of this order.

P.B.R.,