

SHEELA BARSE VS. STATE OF MAHARASHTRA, 1987

*Debasmita Nandi, Christ (Deemed to be University), Lavasa*

**PARTIES:**

SHEELA BARSE

...PETITIONER

Vs.

STATE OF MAHARASHTRA

...RESPONDENT

**CAUSE TITLE:**

WRIT PETITION NO. 1053 OF 1982. (UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA).

DECIDED ON: 18/10/1987

JURISDICTION: ORIGINAL JURISDICTION

**BENCH:**

MISRA RANGNATH DUTT, M.M. (J)

**CITATION:**

JT 1988 (3) 15

AIR 1983 SC 378

**INRODUCTION:**

SHEELA BARSE VS. STATE OF MAHARASHTRA is a case that led to the improvement of the circumstances to which women prisoners were subjected in the prisons of Mumbai. It all started with a journalist's humble letter addressed to the Supreme Court of India to interview the detained in the jails of Mumbai. This letter, being considered a writ petition led to discussions and debate throughout the country about the plight of those arrested and prison laws finally amounting to a fair and balanced judgment.

**FACTS:**

Sheela Barse was a freelance journalist who had sought permission from the jail authorities for the purpose of interviewing the female prisoners serving imprisonment in the Maharashtra jails. The Inspector general of Prisons had initially given her permission. On getting such permission, she started tape recording her interviews with the prisoners, after knowing which the jail authority withdrew their consent. The journalist, aggrieved by this decision, moved to court and filed a writ petition on the grounds that a citizen has a right to know under Articles 19(1) (a) and 21 of the Indian Constitution, how the public institutions are functioning. In his counter-affidavit, The Inspector General of Prisons stated that the permission granted to the petitioner by competent authorities was cancelled on the grounds that such permission was in contradiction of the Maharashtra Prison Manual and hence was illegal. The Respondent also stated that the Articles of the Constitution, which had been referred to by the petitioner, did not apply to the petitioner as she was a freelancer and did not work under any news agency or organization. Also, the petitioner was

not entitled to uncontrolled interviews, and before the publication of any such interview, the facts are generally cross-checked so that any wrong or misleading image is not published in the media. Further, the Respondent's counsel added that the interviews conducted could not be forced on anyone; the willingness of the prisoners to be interviewed had to be insisted upon before interviewing any particular individual prisoner.

## ISSUES

The issues put forward the Supreme Court were:

- a. If the fundamental rights of the petitioner, under Article 19(1) (a) and Article 21 of the Constitution were infringed upon by the authorities by not allowing her to interview the prisoners?
- b. If an uncontrolled interview of prisoners was at all permissible as contended by the petitioner?

## LAWS INVOLVED

- a. Article 14 of the Constitution of India
- b. Article 19 of the Constitution of India
- c. Article 21 of the Constitution Of India
- d. Article 19 (1)(a) of the Constitution Of India
- e. Article 32 of the Constitution Of India
- f. Section 161(2) of the Code of Criminal Procedure, 1973

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## CASES CITED

- *Smt. Prabha Dutt vs. Union of India (UOI) and Ors.*
- *Sunil Batra vs. Delhi Administration and Ors.*
- *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi and Ors*
- *A.K. Roy and Ors. Vs. Union of India (UOI) and Ors.*
- *S.P. Gupta vs. President of India and Ors.*
- *Munn v. Ilino's, [1877] 94, U.S. 113*

## APPLICATION OF LAW TO FACTS

- Article 19(1) (a) guarantees all citizens the right to freedom of speech, and Article 21 of the Indian Constitution guarantees every citizen the right to life. The petitioner's argument before the court was that through these articles, the constitution, i.e., the Supreme law, guarantees every citizen reasonable access to information about the institutions that formulate, enact, implement and enforce the laws of the land. Every citizen has a right to receive such information through public institutions, including the media, as it is physically impossible for every citizen to be informed about all issues of public importance individually and personally. Being a journalist, it is the right and duty of the petitioner to collect and disseminate such kind of information to the citizens subject to any limitation imposed by the Indian Constitution. In the case of *Sunil Batra vs. Delhi Administration and Ors*, which was about the solitary confinement of a prisoner who was sentenced to death, the meaning of the word 'life' under Article 21 was reviewed. The bench held that the quality of life covered by Article 21 is "*something really more than the dynamic meaning attached to life and liberty*"<sup>1</sup> and also that it was applicable to even prisoners. While the respondents in their petition stated that the idea of segregating the prisoners from the community is to keep the prisoners under strict control. While referring to another leading case of *Prabha Dutt V Union of India and Ors*, the learned Chief Justice stated that the constitutional right to freedom

of speech and expression which has the freedom of press implicit in it is not an absolute right. It does not confer the press the right to have unrestricted access to means of information but instead allows it to publish any matter which does not infringe the rights of other citizens and is written on the lines of public order. Morality and decency. It was observed in the Prabha Dutt case that if the person being sought for getting interviewed is not willing then no such right for access to interview lies. The court to substantiate their argument quoted from *Munn v. Illinois*, ([1877] 94, U.S. 113) that "*the courts which sign citizens into prisons have an onerous duty to ensure that, during detention and subject to the Constitution, freedom from torture belongs to the detainee.*"<sup>12</sup> The court further discussed pointing out a previous judgment in *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi and Ors* that a prisoner also has their fundamental and legal rights which cannot be taken away from them. In *A.K. Roy and Ors. Vs. Union of India (UOI) and Ors* it was pointed out that 'life' included the right to live with human dignity. The counsel on behalf of the petitioner also depended upon the observations made by the Supreme Court in the case of *S.P. Gupta vs. President of India and Ors* where it was observed that India having adopted a democratic form of government paved way for the right of the citizens to know what their government is doing. Democratic government without accountability is not democratic in its true form or spirit. This calls for the openness of the government and a full access to information with regard to the functioning of the Government. The court noted that judicial intervention had brought in substantial improvement in the conditions prevailing in jail. As an example to support this argument it cited the example of the incidents of Tihar jail. The honorable court critically examined all the details before awarding a sentence.

## CONCLUSION – DECISION OF THE COURT

The Supreme Court after analysing and discussing all the facts of this case and that of some similar previous cases concluded that:

- As the fundamental right under Article 21 of the constitution is also granted to the prisoners, public access should be granted to them. For the same reason, interviews also become necessary as

otherwise collecting of authentic information about the prisoners and prison conditions might not be possible.

- Further the court allowed the interviewing of the prisoners but imposed reasonable restriction on the same. It contended that these interviews shall not be uncontrolled and must be cross – checked by competent authorities to avoid dissemination of any kind of wrong information to the public. The court also held that in some cases, the authorities might not allow conducting interviews of certain prisoners.
- Finally the court held that the petitioner was free to make an application for interviewing the prisoners to the prescribed authorities again which should be dealt accordingly by the jail authorities, subject to public order, decency and morality.

#### **ANALYSIS:**

In my opinion the Supreme Court had put forward a very balanced judgment in this case. It did allow the petitioner's appeal to interview the residents of the jail as it was of the opinion that prison administrators often try to cover up their faults and lapses by withholding facts. It referred to the incidents of Tihar jail to support its opinion. However it also contended that any such interview would not be absolutely free of control and there would be a certain amount of scrutiny by the prescribed authority to cross – check facts so that wrong information is not disseminated to the public. Thus I would like to contend that the judgment passed by the Supreme Court was both reasonably and legally correct as well as level – headed.