

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) PIL no. ____/2020
(Through Video Conferencing)

In Re: Court on Its Own MotionPetitioner(s)

Through:- None.

v/s

Union Territories of Jammu & Kashmir and Ladakh through Secretaries,
Social Welfare Department Respondent(s)

Through:- None.

Coram:

HON'BLE THE CHIEF JUSTICE (on Video Conference from residence at Jammu)

HON'BLE MR RAJNESH OSWAL (on Video Conference from residence at Jammu)

ORDER
16.04.2020

1 Let this matter be registered as a writ petition in public interest.

2. The COVID-19 pandemic has effected everyone all over the world. But there can be no dispute that it has effected different groups of people differently and there is a differential impact on existing inequalities in society. Unfortunately, all crisis disproportionately impact women. Thus internationally it has been observed that while the pandemic is having a tremendous negative impact on societies and economies, the adverse social and economic consequences of the pandemic for women and girls are devastating.

3. In a statement made by Mr. Antonio Guterres, the Secretary General of the United Nations, nearly 60% of women around the world working in the informal economy, earning less, saving less are at greater risk

of falling into poverty because of the COVID-19 pandemic. As markets fall and businesses close, millions of women's jobs have disappeared. Mr. Antonio Guterres has observed that at the same time as the women are losing paid employment, women's unpaid care work has enhanced exponentially, as a result of school closures and the increased needs of elder people. These currents have been observed to combine as never before to defeat women's rights and deny women's opportunities.

4. The imposition of the unprecedented Corona Virus lockdown lends to creation of a situation of confinement of families in closed spaces as social distancing and the norm of '*Stay Home, Stay Safe*' is enforced.

5. As the lockdown is implemented, societies as a whole are having reduced access to resources. There is increase in stress due to loss of jobs and strained finances. Lack of income, unemployment, insecurity about the future or the fate of children creates tensions amongst the adults leading to abuse of all kinds. This is exaggerated in families with prior histories of such behaviour. Women and children are found to be specially vulnerable to such domestic violence which has seen a worldwide spike.

6. According to Mr. Antonio Guterres, nearly one in five women worldwide has experienced violence in the past year. The problems of these women have got exacerbated as many of them are now trapped at home with their abusers, struggling to reach out to services and are suffering from cuts and restrictions. Access to friends, family, public spaces, legal institutions and police stands rendered barricaded on account of the lockdowns. Resultantly women and girls are unable to escape from the abuser or the violations.

Women and girls are facing a disconnect from social support system with fewer options to get redressal or relief if needed.

7. So far as India is concerned, according to the latest data released by the National Commission for Women, within a week after the lockdown began on March 24, a total of 257 complaints relating to crime against women, have been received by its Complaint and Investigation Cell. This data, shows a steep rise during the lockdown, compared with the figures available for the week between March 2-8, that stands at a total of 116 complaints. The cases of domestic violence, specially, rose to 69 from 30.

8. One factor in the mode of lodging a complaint, which has been noticed in India, is the inability of women and children from the economic weaker sections of the Indian society to accessing on-line platforms for assistance. Any measure for assistance to victims of domestic violence must provide for women and children from this group.

9. Taking note of the difficulties of women, the Secretary-General of the UN has called for all governments to make the prevention and redress of violence against women a key part of their national response plans for COVID-19. Shelters and helplines for women must be considered an essential service for every country with specific funding and broad efforts made to increase awareness about their availability.

10. The position as obtains in India on the issue of domestic violence is similar as is being experienced in countries all over the world including Argentina, Canada, France, Germany, United Kingdom and the United States of America where there are increasing reports of domestic violence during the

crisis and heightened demands for emergency services. Studies have shown that innovative actions are being taken that should be examined and replicated. We extract hereunder a summation of some of the measures which have been taken:

(i) In Argentina, for example, pharmacies have been declared safe spaces for victims of abuse to report;

(ii) In France, reports of domestic violence have risen by about 30% since the government announced a national lockdown. Grocery stores are housing pop-up-counselling services. Victims are being asked to access pharmacies and inform pharmacists about the abuse directly, or using a code word: mask 19 if they are accompanied by their abuser. France's government also recently announced that it had reserved 20,000 hotel rooms for victims of domestic violence.

(iii) In Spain, where lockdown rules are extremely strict, and many people are being fined for breaking them, the government has told women they will not be fined if they leave home to report abuse.

(iv) Canada and Australia have integrated funding for violence against women as part of their national plans to counter the damaging fall-out from COVID-19. Prime Minister Justin Trudeau of Canada has set aside tens of millions of dollars to support women's NGOs, shelters and sexual assault centers across Canada.

(v) In China, the hashtag #AntiDomesticViolenceDuringEpidemic has taken off as part of advocacy with links to online resources-helping to break the silence and expose violence as a risk during lockdown.

(vi) In Antigua and Barbuda, online and mobile service providers are taking steps to deliver support such as free calls to helplines.

(vii) In Columbia, the government has guaranteed continued access to virtual gender-based violence services, including legal advice, psychosocial advice, police and justice services, including hearings.

(viii) *In the UK, Mandu Reid, leader of the Women's Equality Party, has called for special police powers to evict perpetrators from homes for the duration of the lockdown, and for authorities to waive court fees for the protection orders.*

(ix) *A prosecutor in Trento, Italy, has ruled that in situation of domestic violence the abuser must leave the family home and not the victim, a decision hailed as "fundamental" by the trade union CGIL.*

(x) *Within India, the police in Uttar Pradesh, has launched a new domestic violence helpline as cases surge.*

(xi) *In Greece, officials said they were stepping up a campaign to help women deal with problems clearly emerging from the issue of confinement.*

(xii) *The Government in Wales has declared its Live Fear Free helpline will remain open 24/7 and reminded people that if someone is in immediate danger, they should contact '999'. All lead domestic abuse service providers and charities in Wales are ensuring that support is available for people at risk, survivors and their families.*

11. The United Nations has also taken a spotlight initiative and urged governments as follows:

(i) *to dedicate funding in COVID-19 response plans for domestic violence shelters;*

(ii) *ensure increased support to call-in lines, including text services so reports of abuse can take place discreetly;*

(iii) *provide online legal support and psychosocial services for women and girls; which Services in many cases are run by civil society organizations, which now also need financial support;*

(iv) *Shelters should be designated as essential services and kept open, which may mean providing childcare to staff so they can work;*

(vi) *Ensure that these services are accessible, so they should be integrated into other essential service spaces, like grocery stores and pharmacies.*

12. Even at the best of the time, women and girls face tremendous barriers in accessing means to meet for help and securing justice. Illiteracy, financial incapacity; ignorance of available assistance; family and societal barriers; fear of formal institutions like police; insufficient legal aid; lack of information, etc impede women and girls from accessing resources against domestic violence being faced by them.

We have noticed that the biggest obstacle to a woman seeking assistance against abuse and domestic violence is the fact she has to go against intimate domestic partners or her own family members.

The lack of enforcement as well as alternative source of residence also impedes women filing complaints with officials or the police. There is also a huge trust deficit.

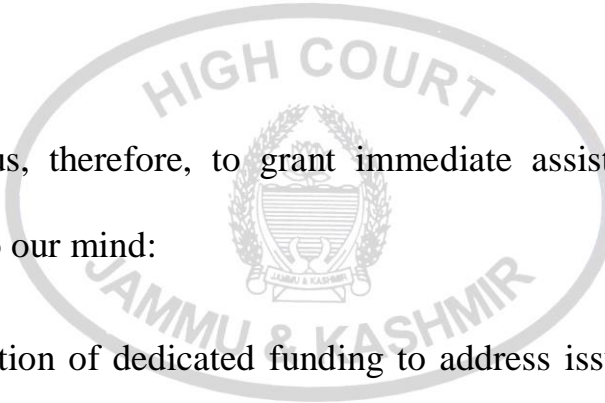
13. Judicial notice can be taken of the fact that the plight of victims of domestic violence in the Union Territories of Jammu and Kashmir as well as Ladakh must be no different as that of similarly placed victims in other jurisdictions. We have no hesitation in holding that to ensure adequate means and tools to address domestic violence to victims in these two Union Territories, women's leadership and adequate contributions must also be at the heart of the COVID-19 planning and implementation measures.

14. In the Union Territories of Jammu and Kashmir and Ladakh, the Jammu and Kashmir State Legal Services Authority has been addressing all

issues concerning women and children at every level even before the COVID-19 problem arose. We are positive that they must be contributing in a large measure to mitigation efforts being undertaken in the Union Territories even at present.

15. We may also usefully advert to the statutory mechanism which is in existence, i.e. the Protection of Women from Domestic Violence Act, 2005 for protection of rights of women who are victims of violence of any kind occurring within the family. A duty is cast upon the government under Section 11(a) of the enactment to take all measures to give wide publicity to the provisions of the law through public media including the electronic and the print media.

16. To us, therefore, to grant immediate assistance the following measures come to our mind:

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- (i) Creation of dedicated funding to address issues of violence against women and girls as part of the COVID-19 response by the Union Territories of the Jammu and Kashmir and Ladakh;
 - (ii) Increased availability of call-in services to facilitate discreet reporting of abuse;
 - (iii) Increased tele/online legal and counseling service for women and girls;
 - (iv) Designated informal safe spaces for women, say grocery stores and pharmacies, where they can report domestic violence/abuse without alerting the perpetrators.

(v) Immediate designation of safe spaces (say for instance empty hotels/education institutions etc) as shelters for women who are compelled to leave their domestic situation. These shelters must be treated as accessible shelters.

(vi) Giving urgent publicity to information regarding all of the above measures as also the availability of the facilities for seeking relief and redressal against the issues of domestic violence.

(vii) Increasing awareness campaigns on all aspects of the issues.

17. Notice shall issue to the Secretary, Department of Social Welfare, Government of Union Territories of Jammu and Kashmir and Ladakh and Member Secretary, JKSLSA to inform this court to submit a report with regard to the steps taken regarding domestic or any other kind of violence being faced by the women on account of the implementation of the COVID-19 lockdown.

18. Let the innovations noted in Paras 10 and 11 and suggestions in Para 16 be examined by the Secretary, Social Welfare Department of the Union Territories of J&K and Ladakh and Member Secretary, JKSLSA and a view be taken with regard to the requirements and steps to be taken to mitigate the sufferings of the victims of domestic violence in the Union Territories.

19. A report of the measures in place, steps underway and those contemplated be placed before us before the next date.

20. The Secretaries of the Jammu and Kashmir Legal Services Authority shall call for list of all cases involving cases of domestic violence which are pending as complaints with the police stations in the Union Territories or in the courts and ascertain the safety and well being of the complainants.

21. The Secretaries of the Jammu and Kashmir Legal Services Authorities may seek the assistance of police and para legal volunteers.

22. All the courts in the Union Territory of Jammu and Kashmir and Ladakh shall treat cases of domestic abuse as urgent and proceed with the matters in accordance with the Circulars issued regarding the procedure to be followed ensuring social distancing.

23. We hereby appoint Ms. Monika Kohli, Advocate as an amicus curiae.

List for further consideration on 28th April 2020.

24. Copy of this order be sent to the noticees, Member Secretary, Jammu and Kashmir State Legal Services Authority, all Secretaries of Jammu and Kashmir District Legal Services Authorities as well as learned Amicus Curiae.

(RAJNESH OSWAL)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Jammu
16.04.2020
Raj Kumar