Subject Name: Domestic Violence Act
Topic Name: Procedure for Obtaining Orders and Reliefs

Table of Content:-

Application to Magistrate..... 1
Notice..... 3
Counseling.....4

Application to Magistrate

Section 12 of the Domestic Violence Act lays down the process of applying to the Magistrate for seeking reliefs under the Act:

1. Filing an Application: An aggrieved person, Protection Officer, or any other person acting on behalf of the aggrieved person can submit an application to the Magistrate seeking one or more reliefs provided under the Act. Before making any decision on such an application, the Magistrate must take into account any domestic incident report submitted by the Protection Officer or service provider.

2. Nature of Relief: The relief sought may include an order for the payment of compensation or damages, independent of the right of the aggrieved person to file a separate lawsuit for compensation or damages resulting from the acts of domestic violence committed by the respondent. If a court has already issued a decree for compensation or damages in favor of the aggrieved person, any amount paid or payable under the Magistrate's order shall be adjusted against the amount payable under the decree.

3. Form and Content of Application: Each application must adhere to the prescribed format and include the necessary details as specified by the relevant authorities.

4. Fixing the First Hearing: The Magistrate is responsible for scheduling the first hearing, which should ideally take place within three days from the date of receiving the application by the court.

5. Timely Disposal of Application: The Magistrate should make efforts to dispose of every application within a period of sixty days from the date of its initial hearing, ensuring a swift and efficient resolution of cases related to domestic violence.

This section ensures that aggrieved persons have a streamlined process for seeking legal recourse and obtaining necessary reliefs under the Domestic Violence Act, with the aim of providing them with prompt relief and protection from further harm.

In the case of **Danish Chauhan Vs DGP J&K.**, the Jammu and Kashmir and Ladakh High Court clarified that the initiation of proceedings by a wife against her husband under the DV Act does not constitute a bar against filing a first information report (FIR) for cruelty under Section 498A (cruelty) of the Indian Penal Code.

The Court elaborated that the nature of proceedings under Section 12 of the DV Act and criminal proceedings initiated based on the lodging of an FIR are distinct from each other.

An application concerning domestic violence can be presented to the magistrate seeking various reliefs as outlined in the sections of the Act. This application may be filed by:

- The aggrieved person
- The Protection Officer on behalf of the aggrieved person
- Any other person acting on behalf of the aggrieved person

In the recent case of **ABC v. XYZ**, the Bombay High Court affirmed that a Muslim woman cannot be deprived of maintenance in proceedings initiated under Section 12 of the D.V. Act even after divorce. The court cited the precedent set by the Supreme Court in Shabana Bano v. Imran Khan. In that case, the Supreme Court ruled that even if a Muslim woman has been divorced, she retains the right to claim maintenance from her divorced husband as long as she does not remarry.

Regarding jurisdiction, the competent court for hearing such cases would be the first-class magistrate court or metropolitan court within whose local limits:

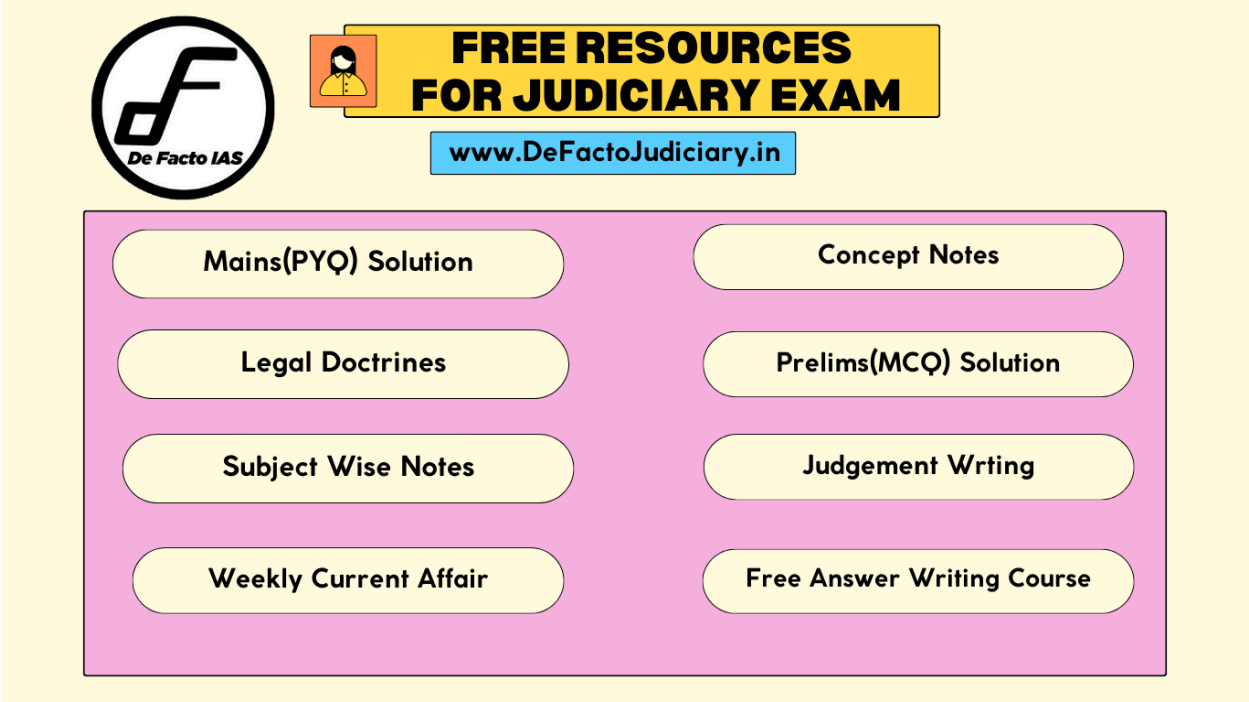
- The aggrieved person permanently or temporarily resides, carries on business, or is employed
- The respondent permanently or temporarily resides, carries on business, or is employed
- The cause of action arises

Orders made under the Act are enforceable throughout India. When disposing of the application, the magistrate must consider any domestic incident report received from the Protection Officer or service provider.

The relief sought under this section includes the issuance of orders for payment of compensation or damages, without prejudice to the right of the aggrieved person to institute a separate suit for compensation or damages for injuries caused by the act of domestic violence.

If the magistrate is satisfied that the application prima facie discloses that the respondent is committing or has committed an act of domestic violence, or there is a likelihood of such violence, the magistrate may grant ex parte interim orders against the respondent based on the affidavit of the aggrieved person.

These orders may include Protection orders, residence orders, monetary relief, custody orders, or compensatory orders as per the circumstances of the case. In case of a previous decree of compensation or damages passed by another court in favor of the aggrieved person, any amount paid shall be set off against the amount payable under this Act.



The application to the magistrate should conform as closely as possible to the prescribed formats under the Act and Rules. Upon receiving the application, the magistrate must schedule the first hearing date within 3 days and endeavor to dispose of every application within 60 days of the first hearing.

Notice of the hearing date shall be given by the magistrate to the Protection Officer, who shall then serve it to the respondent. At any stage of the application, the magistrate may order counselling for the respondent or aggrieved person, either singly or jointly with any member of a service provider.

The magistrate may also enlist the assistance of a suitable person, preferably a woman, including someone engaged in the welfare of women, to assist the court in its functions. If circumstances warrant and if either party desires, the magistrate may conduct the proceedings in camera. In the case of ***Nasir Khan son of Shri Hazi Hasan Raja v. Smt Rizwana Sheikh, wife of Shri Nasir Khan***, 2018 3 RLW (Raj) 1842, the Honorable Rajasthan High Court held that a victim of domestic violence cannot be compelled to invoke the jurisdiction of the Family Court to seek reliefs provided by the 2005 Act.

Notice

Section 13 of the Domestic Violence Act pertains to the service of notice regarding the date of hearing fixed under Section 12:

1. Notice to Protection Officer: The Magistrate is required to provide a notice of the hearing date set under Section 12 to the Protection Officer. It is the responsibility of the Protection Officer to ensure the service of this notice to the respondent and any other person as directed by the Magistrate. This service must be carried out through means prescribed by law within a maximum period of two days from the date of receipt of the notice, or within any further reasonable time as permitted by the Magistrate.

2. Proof of Service: The Protection Officer must furnish a declaration of service of notice in a prescribed format. This declaration serves as conclusive evidence that the notice was duly served on the respondent and any other person as directed by the Magistrate, unless proven otherwise.

This section ensures that all parties involved are duly informed about the date of the hearing, allowing them adequate time to prepare and participate in the legal proceedings related to domestic violence cases. It also establishes a formal mechanism for documenting and verifying the service of notices, ensuring transparency and accountability in the legal process.

Important Links for Judiciary Free Resources (Click on Each to Open Respective Pages)	
Subject Wise Mains PYQ Solution	Essay for Judiciary
Subject Wise Notes	Legal Doctrines
Landmark Judgements	GS Notes
Weekly Current Affair	Subject Wise Prelims PYQ Solution
Free Answer Writing Course	Judgement Writing
Telegram Link	Youtube Link

Counseling

Section 14 of the Domestic Violence Act deals with counselling provisions:

1. Counselling Directive: The Magistrate, during any phase of the proceedings under this Act, has the authority to instruct either the respondent or the aggrieved person, or both jointly, to undergo counselling. This counselling is to be conducted by a member of a service provider who possesses the prescribed qualifications and experience in counselling.

2. Next Hearing Date: Upon issuing such a directive for counselling under subsection (1), the Magistrate is required to schedule the subsequent hearing date for the case. This next hearing date must be fixed within a timeframe not exceeding two months from the date of issuing the counselling directive.

This section emphasizes the significance of counseling as a viable approach for resolving disputes or tackling underlying issues in cases of domestic violence. By offering a pathway for counseling intervention, the Act endeavors to foster reconciliation, support emotional healing, and enhance the overall well-being of the individuals embroiled in such proceedings.

De Facto IAS