**Query -** I am a Hindu woman living in Delhi. My husband and in-laws are mentally harassing me and demanding dowry. I want to leave the house with my 4-year-old daughter. What are my legal rights? Can I file a case? Will I get custody of my child? Where should I go first?  
  
**Response -**   
**1) Situation Understanding & Legal Reasoning**

**Facts (as understood):**

The client is a Hindu woman residing in Delhi, married under the Hindu Marriage Act, 1955. She alleges mental harassment and dowry demands from her husband and in-laws. She wishes to leave her matrimonial home with her 4-year-old daughter and seeks legal recourse, including child custody.

**Clarifying Questions:**

1. What specific instances constitute the mental harassment and dowry demands? Please provide details of the incidents, dates, and witnesses if any.
2. Is there any written evidence of the dowry demands (e.g., messages, letters)?
3. Does the client have any independent financial resources?
4. Is the client's husband employed? What is his income?
5. Does the client own any property, either jointly or separately?

**Legal Issues:**

1. **Domestic Violence:** The allegations of mental harassment constitute domestic violence under the Protection of Women from Domestic Violence Act, 2005 (PWDVA).
2. **Dowry Harassment:** The dowry demands are an offense under Section 498A of the Indian Penal Code (IPC).
3. **Child Custody:** The client's right to custody of her 4-year-old daughter under the Hindu Minority and Guardianship Act, 1956, and the relevant provisions of the Guardians and Wards Act, 1890.
4. **Maintenance:** The client's entitlement to maintenance for herself and her child under Section 125 of the Code of Criminal Procedure (CrPC) and Section 24 of the Hindu Marriage Act, 1955.
5. **Residence Order:** Securing a residence order under the PWDVA.

**Applicable Law (with sections/Acts):**

1. **Protection of Women from Domestic Violence Act, 2005 (PWDVA):** Sections 2(a), 2(v), 18, 19, 23. This act provides for protection orders, including residence orders, and monetary relief.
2. **Indian Penal Code (IPC), 1860:** Section 498A (cruelty by husband or his relatives).
3. **Hindu Minority and Guardianship Act, 1956:** This Act deals with the guardianship of Hindu minors. In cases of young children, the mother generally has a preferential right to custody.
4. **Guardians and Wards Act, 1890:** This Act provides a broader framework for guardianship matters.
5. **Code of Criminal Procedure (CrPC), 1973:** Section 125 (maintenance to wives, children, and parents).
6. **Hindu Marriage Act, 1955:** Section 24 (court's power to pass orders regarding maintenance).

**Initial Opinion:**

The client has strong grounds to file a case under the PWDVA seeking protection from domestic violence, a residence order, and maintenance for herself and her child. Simultaneously, a complaint under Section 498A IPC can be filed against her husband and in-laws for dowry harassment. Regarding child custody, given the child's age, the court is likely to grant her custody, subject to the husband's visitation rights. It is advisable to immediately seek legal counsel and file these cases in the appropriate court in Delhi. The court will consider the best interests of the child while determining custody arrangements. I advise obtaining a Protection Order under PWDVA as a matter of urgency. We need to gather all relevant evidence to strengthen the case.

**Next Steps:**

1. Schedule a consultation to discuss the case in detail and gather all necessary information.
2. Prepare and file an application under the PWDVA for a Protection Order, including a request for maintenance and a residence order.
3. File a complaint under Section 498A of the IPC.
4. Explore options for seeking interim maintenance under Section 125 CrPC.

This is preliminary legal advice. A comprehensive assessment requires detailed information and evidence.

**2) Step-by-Step Action Plan**

Based on your statement, you are experiencing domestic violence and dowry harassment under the Protection of Women from Domestic Violence Act, 2005 (PWDVA) and potentially facing issues related to child custody under the Hindu Marriage Act, 1955. Let's create a step-by-step action plan:

**Step 1: Seek Immediate Protection under PWDVA:**

* **Action:** File a complaint under Section 12 of the PWDVA at the jurisdictional Magistrate Court in Delhi. This is crucial for your immediate safety and that of your daughter. The court can grant you protection orders, including restraining your husband and in-laws from contacting or harassing you. You can also seek interim maintenance for yourself and your child under Section 23.
* **Law/Section:** Section 12, Section 23, PWDVA, 2005.
* **Evidence:** Gather any evidence of harassment, including messages, emails, witness testimonies, medical reports (if any injuries), and photos.

**Step 2: File for Divorce:**

* **Action:** File a divorce petition under the Hindu Marriage Act, 1955, citing cruelty (Section 13(1)(ia)) as the ground for divorce. This will be filed in the Family Court in Delhi.
* **Law/Section:** Section 13(1)(ia), Hindu Marriage Act, 1955.
* **Evidence:** The same evidence gathered for the PWDVA complaint will be relevant here.

**Step 3: Seek Child Custody:**

* **Action:** Within the divorce petition, specifically plead for the custody of your 4-year-old daughter. Given her age, the court will likely prioritize her best interests, which usually involves awarding custody to the mother unless compelling reasons exist. You will need to demonstrate your ability to provide a safe and stable environment for your child.
* **Law/Section:** Section 19 of the Hindu Minority and Guardianship Act, 1956, and the court's inherent power to decide on child custody in divorce cases.
* **Evidence:** Provide details about your living arrangements, financial stability, and your child's well-being.

**Step 4: Seek Maintenance:**

* **Action:** File an application under Section 125 of the CrPC for maintenance from your husband for yourself and your child. This application can be filed alongside or separately from your divorce petition.
* **Law/Section:** Section 125, Code of Criminal Procedure, 1973.
* **Evidence:** Provide proof of your income (or lack thereof) and your husband's income and financial capacity.

**Step 5: Legal Assistance:**

* **Action:** Seek legal representation from a lawyer specializing in family law. They can guide you through the legal procedures, help gather evidence, and represent you in court.
* **Law/Section:** This step is not governed by a specific section but is crucial for navigating the legal process effectively.

**Step 6: Interim Relief:**

* **Action:** Request interim maintenance and protection orders from the court during the pendency of the case. This will provide financial support and safeguard you and your daughter while the case is ongoing.
* **Law/Section:** Sections 23 and 24 of the PWDVA and the court's inherent power to grant interim relief.

**Where to go first:**

You should immediately approach a lawyer specializing in family law in Delhi. They can help you file a complaint under the PWDVA and guide you through the entire legal process. A women's shelter or NGO can also provide temporary housing and support.

**Important Considerations:**

* **Documentation:** Keep meticulous records of all communications, incidents, and legal proceedings.
* **Evidence:** Gather strong evidence to support your claims, including witness statements, medical reports, and any other relevant documentation.
* **Consistency:** Ensure consistency in your statements and evidence across all legal proceedings.

This is a general outline. The specific procedures and timelines may vary depending on the court's caseload and other factors. Consult with a lawyer to get personalized advice tailored to your specific situation. Remember, acting quickly is vital to protect your safety and secure your rights.

**3) Sample Draft (Petition / Notice / Application)**

Based on your situation, you should first seek immediate protection under the Protection of Women from Domestic Violence Act, 2005 (PWDVA). Simultaneously, you can initiate divorce proceedings and seek child custody. I cannot guarantee custody, as it depends on the specific facts and the court's discretion.

Here's a sample application you can adapt for the Magistrate under the PWDVA:

**IN THE COURT OF THE MAGISTRATE [Name of District], DELHI**

**Application Under Section 12 of the Protection of Women from Domestic Violence Act, 2005**

**Applicant:** [Your Full Name], [Your Address], [Your Phone Number] **Respondent:** [Husband's Full Name], [Husband's Address], [Husband's Phone Number] **&** [Father-in-law's Full Name], [Father-in-law's Address], [Father-in-law's Phone Number] **&** [Mother-in-law's Full Name], [Mother-in-law's Address], [Mother-in-law's Phone Number] ( *Add other in-laws as needed*)

**Subject:** Application for Protection Order under the Protection of Women from Domestic Violence Act, 2005.

**1. Facts:**

1. I am a Hindu woman residing at [Your Address] in Delhi and am married to the Respondent, [Husband's Name], on [Date of Marriage]. We have a four-year-old daughter, [Daughter's Name].
2. Since our marriage, I have been subjected to continuous mental cruelty and harassment by the Respondents. This includes [Detail specific instances of mental cruelty and harassment, e.g., constant verbal abuse, threats, humiliation, social isolation, etc.].
3. The Respondents have also been demanding dowry in the form of [Specify dowry demands]. They have subjected me to threats and intimidation to fulfill these demands.
4. Due to the constant harassment and fear for my safety and the safety of my daughter, I have been compelled to leave the matrimonial home.
5. I am currently residing at [Your Current Address].

**2. Grounds:**

The acts of the Respondents constitute domestic violence as defined under Section 3 of the Protection of Women from Domestic Violence Act, 2005. Specifically, their actions fall under clauses (a) and (b) of Section 3, being acts of cruelty and harassment. The demand for dowry is also a form of cruelty and harassment.

**3. Prayer/Reliefs Sought:**

I humbly pray to this Hon'ble Court to:

a) Pass an order under Section 18 of the PWDVA, granting me protection from further acts of domestic violence by the Respondents. b) Pass an order under Section 17 of the PWDVA, restraining the Respondents from contacting me or coming within a specified distance of my residence. c) Pass an order under Section 23 of the PWDVA, directing the Respondents to pay monetary compensation for the mental harassment and injury caused to me. d) Pass any other order or relief which this Hon'ble Court deems fit and proper in the circumstances of the case.

**4. Verification:**

I solemnly affirm and declare that the facts stated above are true and correct to the best of my knowledge and belief.

**Place:** Delhi **Date:** [Date] **Signature:** [Your Signature]

**Note:** This is a sample application. You MUST provide specific details about the harassment, threats, and dowry demands. It is highly recommended you seek legal counsel from a lawyer specializing in family law to file this application and pursue your other legal options (divorce, child custody, etc.). The lawyer can help you gather evidence and present your case effectively. There are legal aid services available if you cannot afford a lawyer. You can also contact women's support organizations for assistance. Your safety and your daughter's well-being are paramount. Act swiftly to protect yourselves.

**4) Additional Advice / Things To Keep In Mind**

Based on your statement, you are facing domestic violence and dowry harassment under the Protection of Women from Domestic Violence Act, 2005 (PWDVA) and potentially offences under the Indian Penal Code (IPC). Let's address your concerns systematically:

**1. Immediate Actions:**

* **Leave the house:** Your safety and your daughter's are paramount. Leave the matrimonial home immediately and seek temporary shelter with family or friends. Document this move.
* **Gather evidence:** Collect any evidence of harassment, including:
  + **Written communication:** Save emails, text messages, WhatsApp chats, etc.
  + **Witness statements:** Obtain statements from family, friends, neighbours who have witnessed the harassment.
  + **Medical records:** If you have any physical injuries, obtain medical certificates.
  + **Photographs/videos:** Document any visible damage to property or evidence of abuse.
* **File a complaint:** Simultaneously, file a complaint under the PWDVA at the appropriate jurisdictional Magistrate court in Delhi. You can also file an FIR under relevant sections of the IPC (e.g., 498A for dowry harassment, 406 for criminal breach of trust, and relevant sections for assault or mental cruelty). The police will investigate and you may obtain protection orders under the PWDVA.

**2. Legal Rights and Remedies:**

* **PWDVA:** This act provides for protection orders, monetary compensation, and residence orders. You can seek a protection order restraining your husband and in-laws from contacting you or coming near your residence. You can also seek compensation for the harassment.
* **Custody of your child:** Under the Hindu Minority and Guardianship Act, 1956, the mother generally has the primary right to custody of a child below five years of age. However, courts consider the child's best interests. Your evidence of the harassment strengthens your claim for custody.
* **Maintenance:** You are entitled to claim maintenance for yourself and your child under Section 125 of the CrPC. This can be claimed alongside or separately from the PWDVA case.
* **Dowry Harassment:** A case under Section 498A of the IPC can lead to arrest and prosecution of your husband and in-laws.

**3. Court/Forum & Timeline:**

* **First step:** File a complaint under the PWDVA at the appropriate family court or magistrate court in Delhi. The jurisdiction depends on your residence.
* **Timeline:** There is no fixed timeline for these cases. They can take several months or even years depending on court workload and complexity. However, protection orders under PWDVA can be obtained relatively quickly.
* **Legal Aid:** You can seek legal aid from organizations like the Delhi State Legal Services Authority (DSLSA) or other NGOs working on women's rights. They can provide legal assistance and representation.

**4. Additional Advice:**

* **Keep records of all communications and interactions:** This includes court dates, police interactions, and communication with lawyers.
* **Seek professional legal counsel:** A family lawyer specializing in domestic violence and matrimonial matters can guide you effectively.

**Disclaimer:** This information is for general guidance only and does not constitute legal advice. You must consult with a legal professional for personalized advice based on your specific circumstances. I strongly urge you to seek immediate legal counsel. Do not delay in taking action to protect yourself and your daughter. Verify government helpline numbers and portal information independently from official sources.