### **Query -** My wife has left our house 3 months ago and taken our 6-year-old son with her. She is not allowing me to meet him and has also filed a false domestic violence complaint. What legal options do I have to get custody or at least visitation rights? **Response -** **1) Situation Understanding & Legal Reasoning**

**Facts (as understood):**

The client is a husband in a Hindu marriage. His wife left the matrimonial home three months ago, taking their six-year-old son with her. The wife is allegedly preventing the husband from seeing the child and has filed a domestic violence complaint, which the husband claims is false. The husband seeks legal options to obtain custody or, at minimum, visitation rights to his son. No further details are provided regarding the alleged false domestic violence complaint or the reasons for the wife's departure.

**Legal Issues:**

1. **Child Custody:** The primary legal issue is determining the custody and visitation rights of the six-year-old son. The court will consider the best interests of the child as paramount.
2. **Domestic Violence Complaint:** The husband alleges the wife's domestic violence complaint is false. This necessitates investigating the merits of the complaint. If the complaint is found to be false, the wife may face legal repercussions.
3. **Maintenance:** Depending on the outcome of the custody and domestic violence proceedings, the husband may have to contribute to the child's maintenance.
4. **Jurisdiction:** The relevant court's jurisdiction will depend on the wife's and child's current residence and the location where the marriage was registered.

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

1. **Hindu Minority and Guardianship Act, 1956:** This Act governs the guardianship and custody of Hindu minors. The court will consider the child's best interests, including the child's age, the parent's ability to provide a stable and nurturing environment, and the child's wishes (if the child is of sufficient maturity to express them).
2. **Guardians and Wards Act, 1890:** This Act provides a supplementary framework for guardianship matters.
3. **Code of Criminal Procedure (CrPC), 1973:** Section 125 (maintenance to wives, children, and parents) may be relevant if the court orders maintenance for the child.
4. **Protection of Women from Domestic Violence Act, 2005 (PWDVA):** This Act is relevant because a complaint has been filed. The court will need to investigate the allegations. If the complaint is determined to be false, the wife may face penalties.
5. **Indian Penal Code (IPC), 1860:** While not directly applicable to custody, it could be relevant if the wife's complaint is found to be false (e.g., filing a false complaint is an offense).
6. **Hindu Marriage Act, 1955:** While not directly governing custody, it provides the legal framework for the marriage and may be relevant in determining ancillary issues like maintenance.

**Initial Opinion:**

The husband's ability to secure custody or significant visitation rights will depend heavily on the facts and evidence presented to the court. The court will prioritize the child's best interests. The alleged false domestic violence complaint needs to be addressed vigorously. The husband should gather evidence to refute the wife's claims, including any evidence that contradicts her allegations. He should also gather evidence demonstrating his ability to provide a suitable environment for the child. It is crucial to obtain legal representation to navigate the legal process effectively. The husband should immediately consult with a family lawyer to discuss the specifics of his case, gather evidence, and prepare a response to the wife's domestic violence complaint and custody petition. He should also consider filing a counter-petition for custody or visitation rights. The outcome will depend on the specific facts presented to the court. The court may order investigations into the claims of both parties and decide on the best course of action for the child’s welfare.

**Clarifying Questions:**

1. What specific allegations are made in the wife's domestic violence complaint?
2. What evidence does the husband have to refute the wife's claims?
3. What is the husband's current living situation and financial stability?
4. Does the husband have any evidence of his interaction with the child before the wife left? (Photos, videos, messages, etc.)
5. Where is the wife currently residing with the child?

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

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

I understand you are concerned about your son's custody and visitation rights following your wife's departure and her filing of a domestic violence complaint. Before outlining a practical action plan, I need some clarifying information:

1. **Details of the Domestic Violence Complaint:** What are the specific allegations in the complaint? Do you have any evidence to refute these allegations (e.g., witness statements, communications)?
2. **Your Wife's Whereabouts:** Do you know your wife's current address and contact information?
3. **Your Financial Situation:** What is your income and financial capacity to support your son?
4. **Your Son's Well-being:** Can you provide any information regarding your son's current living situation and well-being?

Once I have this information, I can provide a more tailored and comprehensive action plan. However, I can offer a general outline based on your current description:

**General Action Plan:**

1. **Respond to the Domestic Violence Complaint:** File a counter-affidavit in the court where the domestic violence complaint is pending. This should strongly refute the allegations made by your wife and provide evidence to support your claims. This is crucial to protect your reputation and parental rights. (**Relevant Law:** Protection of Women from Domestic Violence Act, 2005 (PWDVA))
2. **File a Custody Petition:** File a petition for custody or visitation rights for your son in the appropriate Family Court based on your residence. You can seek either sole custody, joint custody, or visitation rights depending on your preference and the child's best interests. This petition should include details of your relationship with your son, your financial stability, and your ability to provide a nurturing environment for him. (Relevant Law: Hindu Minority and Guardianship Act, 1956; Guardians and Wards Act, 1890; relevant sections of the Code of Civil Procedure, 1908).
3. **Seek Interim Relief:** Request interim relief from the court, such as temporary visitation rights, pending the final determination of the custody case. This is important to maintain contact with your son while the case is ongoing. (Relevant Law: Inherent powers of the court under the relevant Acts).
4. **Gather Evidence:** Gather all relevant evidence to support your claims, including:
   * Photographs and videos of your interactions with your son.
   * Witness statements from family, friends, or neighbours who can attest to your parenting abilities and your wife's allegations.
   * Financial documents to demonstrate your financial stability.
   * Any communication with your wife regarding your son.
5. **Legal Representation:** Seek legal representation from a lawyer specializing in family law. They can guide you through the legal process, help gather evidence, and represent you in court. This is crucial for a successful outcome. (Relevant Law: No specific law, but essential for legal proceedings).
6. **Consider Mediation:** Explore the possibility of mediation to resolve the custody dispute amicably. Mediation can help reduce conflict and reach a mutually agreeable solution in the best interests of your son. (Relevant Law: No specific law, but courts often encourage mediation in family disputes).
7. **Address the Allegations:** Directly address the allegations of domestic violence in your counter-affidavit and present evidence to the contrary. If there are specific allegations, you need to create a point-by-point response with counter evidence.

**Important Note:** The outcome of custody cases depends on several factors, including the child's best interests, the parents' ability to provide a stable environment, and the evidence presented. The court will prioritize your son's well-being. Act swiftly and obtain legal counsel immediately to protect your rights. Do not engage in any actions that could jeopardize your case.

This is a general outline. The specific procedures and timelines may vary depending on the court's caseload and other factors. The information above is for general guidance only and does not constitute legal advice. You MUST consult with a lawyer to get personalized advice tailored to your specific situation.

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

IN THE HON'BLE FAMILY COURT, [DISTRICT], DELHI

**Petition Under Section 9 of the Hindu Minority and Guardianship Act, 1956 and Section 25 of the Hindu Marriage Act, 1955**

**Petitioner:** [Your Full Name], [Your Address], [Your Phone Number] **Respondent:** [Wife's Full Name], [Wife's Address (if known)], [Wife's Phone Number (if known)]

**Subject:** Petition for Custody and Visitation Rights of Minor Child

**1. Facts:**

1. The Petitioner and the Respondent were lawfully married on [Date of Marriage] under the Hindu Marriage Act, 1955.
2. A son, [Son's Full Name], aged six years, was born out of the said marriage on [Son's Date of Birth].
3. On or about [Date], the Respondent, without any justifiable reason, left the matrimonial home along with the minor child, [Son's Full Name].
4. Since then, the Respondent has refused to allow the Petitioner access to the minor child, preventing him from meeting or communicating with his son.
5. The Respondent has filed a false complaint of domestic violence against the Petitioner, which is currently pending before [Court Name and Case Number, if known]. The Petitioner vehemently denies all allegations made in the said complaint and intends to contest the same vigorously. [Optional: Briefly state your defence against the allegations].
6. The Petitioner is capable of providing a safe, stable, and nurturing environment for the minor child and is deeply concerned about the Respondent's actions which are detrimental to the child's well-being. [Optional: Add details about your financial stability, living arrangements, etc.]

**2. Grounds:**

1. The Respondent's actions in leaving the matrimonial home and denying the Petitioner access to the minor child constitute a violation of the Petitioner's parental rights.
2. The best interests of the minor child, [Son's Full Name], require that he maintains a relationship with both parents. The Respondent's actions are detrimental to the child's well-being and emotional development.
3. The false domestic violence complaint filed by the Respondent is an attempt to obstruct the Petitioner's parental rights and should not be given credence.
4. The Petitioner is entitled to reasonable visitation rights with his son, under Section 9 of the Hindu Minority and Guardianship Act, 1956, and Section 25 of the Hindu Marriage Act, 1955, considering the best interests of the child.

**3. Prayers/Reliefs Sought:**

The Petitioner humbly prays to this Hon'ble Court to:

a) Pass an order granting the Petitioner custody of the minor child, [Son's Full Name], or, alternatively, grant him reasonable visitation rights and access to the child. b) Pass an order directing the Respondent to produce the minor child before this Hon'ble Court. c) Pass an order directing the Respondent to refrain from making false allegations against the Petitioner. d) Pass any other order or relief as the Hon'ble Court may deem fit and proper in the circumstances of this case.

**4. Verification:**

I, [Your Full Name], the Petitioner, do hereby solemnly affirm and declare that the facts stated in this petition are true and correct to the best of my knowledge and belief.

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

**Note:** This is a sample petition. You MUST provide specific details about your wife's actions, your attempts to contact your son, and any evidence supporting your claims. It is essential to consult with a lawyer specializing in family law to prepare and file this petition and to gather and present evidence effectively. This is a complex legal matter, and professional legal advice is crucial. The outcome of the petition will depend on the specific facts and evidence presented before the court.

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

Given your wife's actions and your concern about your son, here's concise, actionable advice:

**1. Evidence to Collect:**

* **Photographs/videos:** Of your son, your home environment, any gifts you've given your wife.
* **Communication records:** Text messages, emails, WhatsApp chats showing your attempts to contact your wife and son.
* **Witness statements:** From family, friends, or neighbours who can attest to your behavior and your relationship with your son.
* **Financial records:** Bank statements, pay stubs to demonstrate your ability to provide for your son.
* **Police complaint:** A copy of the domestic violence complaint filed by your wife and any related police documentation. Obtain a copy of the FIR.

**2. Timelines/Limitations:**

There are no strict time limits for filing for custody or visitation rights in India, but delaying could be detrimental. Act promptly. The court will consider the length of separation when determining custody and visitation rights.

**3. Court/Forum:**

Approach the Family Court in the jurisdiction where your wife currently resides or where the marriage was registered. If the DV complaint is pending, the same court may handle both matters.

**4. Pro Bono/Legal Aid:**

* **Delhi State Legal Services Authority (DSLSA):** Offers legal aid to those who cannot afford a lawyer. Check their website or visit their office for details.
* **District Legal Services Authorities (DLSA):** Similar services are available at the district level.
* **NGOs:** Many NGOs provide pro bono legal services or referrals to lawyers offering reduced fees.

**5. Government Portals/Helplines:** (Verify independently)

I cannot provide specific helpline numbers or portal links. Always verify such information on official government websites to ensure accuracy and avoid scams. Your lawyer can provide guidance on relevant government resources.

**6. Legal Options:**

* **File a counter-complaint:** If you believe the DV complaint is false, file a counter-complaint with evidence.
* **File a custody petition:** In the Family Court, petition for custody or visitation rights of your son. Highlight your ability to provide a stable and loving environment and emphasize your son's best interests. Provide evidence of your wife's actions preventing you from seeing your child.
* **Interim orders:** Request interim orders for visitation rights while the case is pending.
* **Mediation:** Consider mediation to resolve the matter amicably.

**Crucial Note:** Immediately consult a family lawyer. They can help gather evidence, strategize your legal approach, and represent you in court. Early legal intervention is crucial to protect your rights and your relationship with your son.