

It is only the legislature which can create a law and not the Court. The courts do not legislate, and whatever may be the personal view of a Judge, he cannot create or amend the law, and must maintain judicial restraint.

[Case Brief] S.R. Batra And Anr. V/S Smt. Taruna Batra

<u>Case name:</u>	S.R. Batra and Anr. V/S Smt. Taruna Batra
<u>Case number:</u>	Appeal (civil) 5837 of 2006
<u>Court:</u>	Supreme Court of India
<u>Bench:</u>	S.B. Sinha & Markandey Katju
<u>Decided on:</u>	December 15, 2006
<u>Relevant Act/Sections:</u>	The Protection of Women and Domestic Violence Act, 2005 Section 2(s), 17(1), 19(1)

➤ **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. Smt. Taruna Batra got married to Shri Amit Batra on **14th April 2000** and they had a male child born to them in the **27th November 2001**. As per the prevailing practice, after their marriage, Smt. Taruna Batra shifted into the home of Shri Amit Batra along with her in-laws Shri S.R. Batra and Smt. Dhanwanti Batra. The House is though a two floor building registered in the name of Smt. Dhanwanti Batra, but they all resided on the ground floor of property situated at No. B-135 of Ashok Vihar in Phase I at Delhi-110052.
2. In early 2002, few months after their son was born, relations between the Smt. Taruna and Shri Amit Batra started deteriorating. According to Smt. Taruna, Shri Amit Batra treated her cruelly. This made them shift to the second floor of the said property, which became Smt. Taruna's matrimonial home. However, their shifting to the second floor did not improve their relations, rather on the contrary, their relations deteriorated to such an extent that Shri Amit Batra filed a divorce petition.

3. To this Smt. Taruna registered an FIR against Shri Amit Batra and other family members under the provisions of Sections 406/498A/506 and 34 of the Indian Penal Code (alleged to be counterblast to the Divorce petition). On the basis of this complaint Shri Amit Batra and his parents were arrested in **January 2003**.
4. The happening of these events made it difficult for Smt. Taruna to stay at her matrimonial home and therefore she shifted to her parents' residence.
5. Later, when she tried to enter the matrimonial home, she was unable to as she found that the main entrance was locked.
6. This instigated the first court case by Smt. Taruna Batra (Petitioner) seeking mandatory injunction to open the main entrance to enable her to reside in the matrimonial home, that is, the second floor of said property. To which the Respondents (Shri Amit Batra and his Parents) contented that Shri Amit Batra had purchased some property in Ghaziabad and had shifted there which was the matrimonial home of the Petitioner.
7. This landmark judgment of the Supreme Court has traveled its way up in the judiciary by the decisions of both the lower courts favoring Ms. Taruna Batra. It was the apex court's decisions that send ripples in the established law by reversing the decision of both the lower court.

ISSUE BEFORE THE COURT:

1. Whether the second floor of the property be considered Tarun Batra's matrimonial home;
2. Definition of a matrimonial home laid down by the legislature in the protection of women in Domestic Violence Act, 2005.

➤ RATIO OF THE COURT

1. The High Court, was of the view that in the context of Indian society, a pragmatic view has to be taken while attempting to understand what is meant by the matrimonial home of a married couple, because there is no statute in this respect unlike in England where the Matrimonial Homes Act, 1983 would govern the situation. A spouse who has no proprietary interest in the matrimonial home but is in occupation thereof has a right to remain in occupation of the matrimonial home as against the spouse who has left that matrimonial home under that act.
2. The Supreme Court made a reference to the British Matrimonial Homes Act, 1967 in the case of **B.R. Mehta v. Atma Devi and Ors (1987)4 SCC 183** and observed:

"But such rights are not granted in India though it may be that with change of situation and complex problems arising it is high time to give the wife or the spouse a right of occupation in

a truly matrimonial home, in case of marriage breaking up or in case of strained relationship between the husband and the wife."

3. Disagreeing with the view of the High Court the apex court observed that unlike in England where the rights of spouses to the matrimonial home was governed by the Matrimonial Homes Act, 1967, no such right exists in India.
4. The Court held that the house belonged to the mother-in-law of the respondent and hence the respondent cannot claim right to live in the said house.
5. The court also held that the house could not be said to be a '**shared household**' within the meaning of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 as it neither belonged to the husband nor was it joint family property.
6. It laid down, that only in **three instance** can the **wife claim the husband's house as the matrimonial home**, they being;
 - a) if the property was in the name of the husband; or
 - b) if the husband was paying rent of the property; or
 - c) if the husband was a member of a joint family and the property being undivided.
7. The court also went on to discuss the legal obligation of the husband to provide residence to the wife. The fact that Amit Batra applied for a divorce from the Petitioner (although the divorce petition is now said to have been dismissed in default) does not take away his obligation.
8. Consequently, Amit Batra shifting from the second floor of the said property to Ghaziabad would not ipso facto shift the Petitioner's matrimonial home to Ghaziabad.

➤ **DECISION HELD BY COURT:**

1. The house in question belongs to the mother-in-law of Smt. Taruna Batra and it does not belong to her husband Amit Batra. **Hence, Smt. Taruna Batra cannot claim any right to live in the said house.**
2. In view of the above, the appeal is allowed. The impugned judgment of the High Court is set aside and the order of Senior Civil Judge dismissing the injunction application of Smt. Taruna Batra is upheld. No costs.