

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Desire to Amend Section 498-A of IPC: A Critical Study within the Ambit of 243rd Law Commissions Report

KU RICHA SINGH¹

ABSTRACT

Marriage is a union between two persons and is culturally recognised, establishing rights and obligations between them. Thus, in this social organization the spouse is supposed to deal with and keep up his better half as an obligation which cannot be disregarded. But even in this social institution there exists social evils, one is the dowry system. Number of cases are evident that the wife is made subject to cruelty, whether mental or physical, in case the demand is not fulfilled by her or her relatives. She is ill-treated, harassed, etc. Around more than a half of the Indian women are a victim of domestic violence and dowry related death and cruelty. With the intent to safeguard women, enactments like the Dowry Prohibition Act, the Domestic Violence Act, etc., have been enacted. For the same reason, section 498-A was inserted in the IPC in 1983. It deals with cruelty, whether mental or physical, with a married woman by her husband and/or his family. But as time passed, the concept of cruelty took a new colour. Some of the women have been found to be indulging in registering false and fabricated complaints against their husbands and his family. Various instances have proved that the provision has been and is being misused by evil hands for their own ulterior motives, one being for alimony. Possibly, the main reason behind such practice could be the loopholes in the said provision, i.e., section 498-A of IPC. The laws that have been framed for the protection of women are so much in favour of women that many times ignore the effect of it on innocent men.

The purpose of this research paper is to critically study section 498-A of IPC. The paper aims at highlighting the requirements so as to develop a multidimensional approach and focus on the abuse of the provision under section 498-A of IPC. With this, the author has tried to put some of her own suggestions and recommendations to counter the said evil.

I. INTRODUCTION

“In India, a common argument made against the laws governing violence against women is the

¹ Author is a student at Law College Dehradun, Uttarakhand University, India.

misuse of those laws. Even the courts in India mention about the 'misuse' of laws, specially, concerning sections 498-A and 304B of IPC. In his article titled 'Women and the Law', the former Justice K.T. Thomas, notes that there's a 'general complaint' that the provision under section 498-A IPC is subject to gross misuse and thus, he suggests an amendment in the said provision. The 21st Malimath Committee Report in the year 2003 also notes, significantly, that there is a general complaint that section 498-A of IPC is subject to gross misuse and it uses it as a justification to suggest amendments in this provision".²

Marriage is a union between two persons and is culturally recognised, establishing rights and obligations between them. Thus, in this social organization the spouse is supposed to deal with and keep up his better half as an obligation which cannot be disregarded. It is thought to be a holy responsibility. It is the organization that lauds the sign of adoration, holding, family association and harmony. But, like every other thing has a good as well as a bad aspect, marriage is no exception and one such negative aspect, the social evil, is the dowry system. Dowry refers to the money or property that one of the parties to a marriage demands from the other party to that marriage. In almost every such case, it is the husband's party demanding dowry from the party of the wife. Number of cases are evident that the wife is made subject to cruelty, whether mental or physical, in case the demand is not fulfilled by her or her relatives. She is ill-treated, harassed, divorced and what not for this very reason. In order to safeguard women's interest, provisions have been introduced like the provision under section 498-A IPC, concerning cruelty against her. It was introduced amending IPC in 1983 to deal with matrimonial cruelty on a woman.

But, in this 21st century, the concept of cruelty that the said provision talks about, took a new colour. Back then, the provision was introduced as an 'armour' to fight against the atrocity on women by men, nevertheless, it, with the passing on of time, has become visible that section 498-A left a host of ambiguity that appeared to be used as a solid 'weapon' by evil hands against innocent men and his relatives. This means, firstly, the intention behind insertion of the provision for safeguarding women from cruelty by men isn't fulfilled and secondly, there's abuse of the provision against the innocent men and his relatives making it important to make certain amendments.

II. HISTORY

Women occupied an important status in ancient India and were actually superior in position to

² Shashank Manish, *IPC 498A- Critical Analysis*, Legalserviceindia (Apr. 26, 2021), [http://www.legalserviceindia.com/article/179-498-\(A\)-A-Critical-Analysis.html](http://www.legalserviceindia.com/article/179-498-(A)-A-Critical-Analysis.html).

men. Men and women were equal in almost every aspect in vedic times. A woman used to take part in public sacrifices as men used to do. Hindu ladies took an offer in social and religious rituals. Also, there are some vedic hymns that are allocated to ladies like Apala, the daughter of Atri, Ghosa, the daughter of Kaksivant. The presumption that Hindu religion encouraged inequality between men and women is not accurate, rather, Hindu women possessed the rights like right to property from the Vedic ages, participated in social and holy ceremonies and also, sometimes, were recognized by their own learning.

In any civilization, the social position of women shows the phase of progression at which the civilization has arrived. With regard to a woman's status, there is not a nation that has held women of their nation in higher honour than the way they have been in Hindus. Thus, Hindu mythology does witness that a Hindu woman's status in the Vedic period was honourable and respectable. It is not only the Hindus, but in order to analyse impact of Islam on a woman's status, lets study the immediate pre-Islam Meccan society. The Prophet's first wife was a businesswoman. Not only this but the Prophet was her employer. Also, on his way to propose to his future wife Bibi, the Prophet was stopped by a woman.

The engravings, sources and sculptures belonging to the medieval time shell out a contrasting idea of women than one would expect. From an inscription of 1187 A.D., it is evident that the Jain nuns used to possess the same proportion

of liberty as the males. There were female trustees, priestesses, scholars, etc. Thus, women's status was honourable and respectable then, any religion it be. The abuse of women started with her marriage at a very young age. At the very young age, the lady for whom it was impossible even to consider life's importance, not possible to unravel the importance of life and marriage, she was required to wander into the world of thistles, was required to observe 'purdah', was not allowed to communicate the seniors, was required to talk in low voice, not to talk or meet her better half, midnight being the exception, never to express her distress, if any or articulate trouble as an expression to anyone.

In the twentieth century, around the 1970s, that saw the beginning of sorted out ladies' development in the country, viciousness was one of the, against them, focal points of development. Things like provocation, beating by spouse (husband), assault, etc were very common during that period. In the 1980s, 'endowment demise' frequency relentlessly were ascending in India, thus, ladies' associations pressurized the Criminal Law Amendment Committee and the administration for providing the women an authoritative assurance against the abusive behaviour with her at her home. As a consequence of such extraordinary battling

and campaigning, noteworthy amendments were made in IPC and other Acts like the Indian Evidence Act and the Dowry Prohibition Act, to provide protection to women against conjugal brutality, misbehavior, etc., happening with them.

III. CONCEPT OF CRUELTY IN INDIA AND LAWS RELATED TO IT

The concept of the term 'cruelty' can be understood by referring to the various case laws, that have been decided by the Hon'ble Supreme Court of India-

1. N.G. Dastane v. S. Dastane³- It was observed that such conduct that has been alleged as cruelty must be of such a nature so that it had caused in the mind of the applicant, a reasonable apprehension which is harmful or injurious to dwell with the respondent.
2. V. Bhagat v. D. Bhagat⁴- It was held that cruelty to mental health should be of such a character that it would be unreasonable to expect the parties to dwell together. Consideration should be had to the social status, education of the parties, etc., while arriving at any such conclusion.
3. Vinitha Saxena v. Pankaj Pandit⁵- it was held by the court that what constitutes mental cruelty would depend on the intensity, gravity and stigmatic impact of the conduct in question and not on the number of such events or on the constant course of any such acts.

Following are such few events of cruelty that act like a social evil in the modern era-

1. Slow starvation- wife being overburdened with all the work at home, being ill treated, subjecting her to physical attacks on protesting, not given sufficient food, leading to gradual starvation, etc., in order to satisfy illegal money demand, she devoting suicide, etc., will be held as cruelty.⁶
2. Repeated demand of Dowry- if made and the woman is harassed for it, mentally or physically, will be a conduct considered as cruelty.⁷
3. False allegation in litigation- where the woman(wife) is subject to a series of evil-intended and vexatious litigations to put very hurtful and offensive allegations on her and as a result she is being humiliated and tortured by executing search warrants,

³ (1975) 2 S.C. 326(India).

⁴ (1994) 1 S.C.C. 337(India).

⁵ (2006) 3 S.C.C. 778(India).

⁶ Hira Choudhary v. State of West Bengal, 1997(1) WLC 543.

⁷ Jagdish v. State of Rajasthan, 1998 RCR(Cr) 9(India).

seizures, etc., will amount to cruelty.⁸

In *Inder Raj Malik v. Sunita Malika*⁹, it was held that the term 'cruelty' is defined in the explanation of the concerned provision, i.e., section 498-A, that provides that harassment of a woman with an intention to pressurize such woman or any persons related to her in order to meet a demand being unlawful in nature for any kind of property or any valuable security is cruelty.

Following are few laws relating to cruelty, in India-

1. The Dowry Prohibition Act, 1961

This Act defines¹⁰ the term 'dowry' as any kind of property or some valuable security that is given or has been agreed to be given, either directly or indirectly, by one party to a marriage to the other party to the marriage or by the parent of any party to a marriage or by some other person, to a party to the marriage or to any other person.

It prohibits the request, payment or acceptance of a dowry as a consideration for marriage. It defines dowry as something demanded or given as a precondition for a marriage.

2. Indian Penal Code, 1860

a) Section 406- It is usually applied in investigation of stridhan recovery from the husband and his family for the offences that are related to criminal breach of trust.

b) Section 304B- It was inserted by a 1986 amendment, relating to dowry death. It will be considered dowry death when the married woman's death is caused by any burns or bodily injury within seven years of her marriage and it is proved that she was subjected to cruelty or harassment by her husband or husband's relatives, soon before her death.

c) Section 498-A- It was inserted in 1983 that provides for punishment to a woman's husband or his relatives for subjecting her to cruelty. Explanation to this provision defines the term 'cruelty' as a conduct of such nature that is likely to drive the woman to commit suicide or to cause injury or danger to her life, health, etc., or when she is being harassed with a view of coercing her or any person related to her to meet some unlawful demand or on account of failure by her or person related to her to meet such demand.

3. The Domestic Violence Act, 2005

A civil remedy was brought into the picture in 2005 and was amended in 2006 and is known

⁸ Smt. M.M. Chitnis v. Mr. M.M. Chitnis, 1991(2) Maharashtra L.R. 753.

⁹ 1986 RKR 220(India).

¹⁰ The Dowry Prohibition Act, 1961, No. 28, Acts of Parliament, 1961(India),s.2.

as the Protection of Women from Domestic Violence Act.

IV. ABUSE OF THE PROVISION U/S 498-A IPC AND THE LAW COMMISSIONS 243RD REPORT

Section 498-A IPC that was inserted in the year 1983 reads as-

“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine”.

Presently, in legal phrases, offence under the said provision is a cognizable, non-bailable and non-compoundable offence. Explanation to this section provides for the meaning of the term ‘cruelty’ as:

“a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”.

It is a male or female, regardless of their age, marital status, etc., if they have an estranged 'bahu' (daughter in law) in their family, regardless of whether she is dwelling/ has dwelled/ or never dwelled with them, they can be sentenced under the said provision based on her complaint to the police. There's no way to avoid any complaint under this section.

While the intention of the provision is crystal clear, it also has both good and bad sides. The good side being there are many women getting benefitted from the provision, thus using it as a shield. But a negative aspect is that there are some who make the use of it as a sword, thus not to protect themselves against any kind of cruelty covered under this section, but to attack and torture the innocents for their own motives.

A study conducted with the aid of a few social activists says that the urban society's educated women are taking the benefit of this section that allows them to live independently and separate her husband from his family. Availability of this section is such that the husband cannot even report his grievance because the law is for protection of women only and not men's.

On carefully examining the recent cases, a horrifying picture is the result. Following is a try by the author to differentiate between the law and the actual practice:

1. Nature of crime- cognizable

According to law- it is the police officer's duty to register the complaint under this section and investigate it properly.

Actual scenario- with no or insufficient investigation, the suspects are being arrested more so in exchange for bribes.

2. Nature of crime-non-bailable

As per law- the magistrate has been bestowed with the power of refusing bail and to send the individual in police or judicial custody.

Actual scenario- all sorts of gambles take place before producing the individual before a magistrate, including settlement by offering a good amount of money. Through instances, it is also evident that sometimes the magistrate and the police officer jointly decide for the case settlement.

It makes it clear how the provision itself is hosting a bulk of loopholes.

"Through a Right to Information application, we observed that about 58,000 cases under the said section are filed each year and extra than a lakh human beings get arrested in false cases. Every 4 minutes, one man is falsely accused of dowry harassment and every 2 hours, one senior citizen is falsely accused of dowry demands", said Sandeep Bhatia, President of Gender Human Rights Society. The key reason at the back of the abuse of the law is cash, precisely ALIMONY.

Following are two figures from the report of the National Crime Records Bureau given in the year 2018 relating to offence under section 498-A IPC:

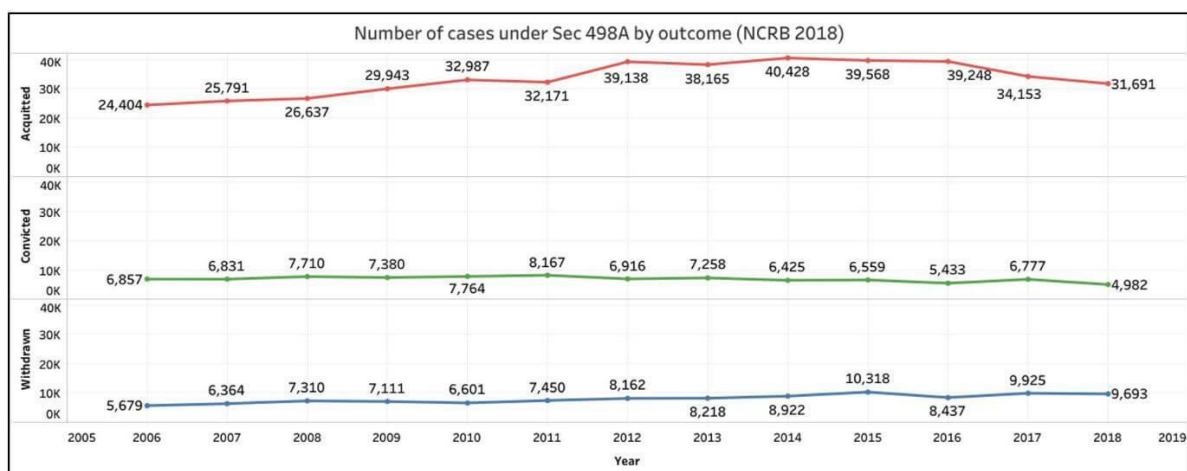


Fig.-1: Number of cases under Section 498A by outcome (NCRB, 2018)

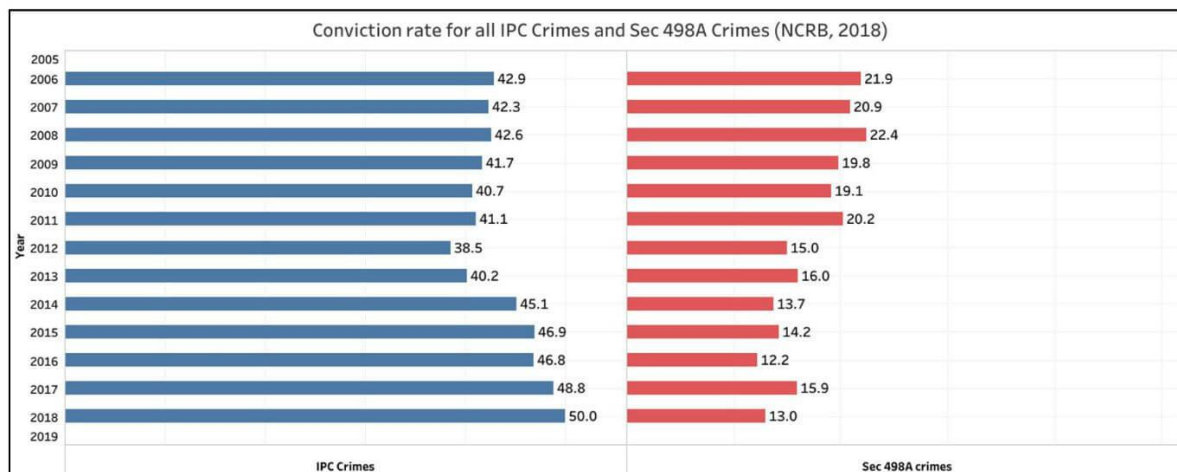


Fig.-2: Conviction rate for all IPC Crimes and section 498A Crimes (NCRB, 2018)

It is very much evident from figure 1 that the number of withdrawals or compromises in cases under section 498A, between 2005 to 2018, has gradually increased and has increased by 70%. Also, the number of acquittals has increased between this period. From figure 2, it can be figured out that the conviction rate under section 498A is almost half of the conviction rate under various other crimes in IPC.

An usual dowry harassment averment results in-

1. The man(husband) facing menaces on his own protection;
2. unjustified apprehension of the man(woman's husband) and persons related to him with improper investigation;
3. The property of the husband and his livelihood are in peril and dispossessed with the aid of law;
4. Violation of the right to live with dignity; etc.

In its report of 2005, a feminist organization called the Center for Social Research, states that 98% of such cases under section 498-A are false and in minimum number of such cases end up in the sentence of the accused.

The question is why is the section concerned being misused? Reasons can be many including-

1. Legal extortion-Getting rich brief scheme to extort big quantities of money;
2. Prior relationship of the wife;
3. Women indulging in adultery uses the section as a bargaining tool;
4. Wife desires the husband to abandon his mother, father and siblings; and many such other reasons.

In this case, *Rajesh Sharma & Ors. v. State of UP & Anr.*¹¹, the apex court exceeded a directive to police and magistrates that there might be no immediate detentions or coercive actions springing up out of lawsuits lodged underneath section 498-A without determining the authenticity of the complaints made. The bench stated that there was a growing pattern of instances in which the women had been abusing the legal provision under the said section and also stated that there had been violation of human rights of innocents.

In *Arnesh Kumar v. State of Bihar & Anr.*¹², so as to prevent arrest that is unnecessary and casual remand by the police, the Court issued few directions-

1. Police officers now will be taught not to arrest automatically when any case under section 498-A is registered;
2. The motives and materials necessitating such arrest should be forwarded to magistrate while producing accused before him;
3. If the police officer has decided not to arrest, the decision should be put forward to the magistrate in writing.

Under the title of 'Section 498-A of IPC', the Law Commission reiterated the recommendations of its 237th report in its 243rd report in August, 2012 and had proposed following recommendations in the Para 19th of the report:

1. In addition to the High Courts, the apex court has noticed judicially the misuse of section 498-A but the reality stays that the misuse cannot be a ground to abolish this section or to denude it of its tooth. It is essential to maintain in thoughts the social goal in the back of the said section.
2. There is an urgent desire that the men and women in the rural areas be trained about how this section socially affects them.
3. The offence under this very section was recommended to be made compoundable with the permission of the court and also, prone to a settling down period of around three months. This Commission has already in its 237th report, under the title 'Compounding of IPC Offences', recommended this very offence to be made compoundable. Even in its 154th report, they clearly recommended making it compoundable.

States like Andhra Pradesh, already made it an offence that is compoundable. Even the

¹¹ Criminal Appeal no. 1265 of 2017.

¹² Criminal Appeal no. 1277 of 2014.

Hon'ble Supreme Court, in *Ram Gopal v. State of M.P. & Ors.*¹³, observed that this offence should be made compoundable.

4. As per the Commission, the offence under this very section shall be continued to be a bailable one. Also, it desires to guard in opposition to the unjustified and unwarranted detentions in practice by the police. The Commission suggests that the police strictly study in letter and spirit the conditions that have been listed down in section 41 and section 41-A of CrPC.
5. The Law Commission has encouraged the insertion of a third subsection to section 41 of the Code in order to prevent arbitrary and useless arrests.
6. For the purpose of expeditious disposal, cases under section 498-A should receive special attention, both by the prosecution and the judiciary.

The Indian Government directed the Centre for Social Research India to conduct a study on section 498-A, with the support of USAID and IFES. their report highlights following;

1. Whether IPC section 498-A used or misused? and,
2. Is section 498-A IPC a tool to combat domestic violence?

The outcome is pretty disclosing. In India, around five crores married women are sufferers of domestic violence. Around 6.5 percent of the overall instances studied through sufferers' interviews were found fake at the extent of investigation. Many of the accused, police, judges, and lawyers, categorically said that educated and independent minded ladies misuse this section.

V. SUGGESTIONS AND CONCLUSION

In the view of the author, the author would like to suggest following suggestions keeping in mind the present scenario of our society:

1. Associations like women NGOs need to examine appropriately not being inclined towards ladies keeping it in their minds that the concerned law is being misused to annoy their husband and his family.
2. From various parts of the nation it is evident from a number of instances of men being badgered by his spouse or his wife's family. There are no exactly such associations that can assist these men and his relatives with their grievances. Thus, it is highly recommended that such associations should be established to help such distressed families.

¹³ (2010) 13 S.C.C. 540(India).

3. There is a need for an expedient trial in such cases under this section section 498-A. Along with guaranteeing equity for the innocent men that are being dragged in fabricated cases, it can also bring about regulation of grievances of legitimate settlement fatalities. Lessening of fabricated cases will also decrease the burden of the courts.

4. The offence under section 498-A, as already have been stated, is a non-bailable as well as non-compoundable offence, making it difficult for the complainant to withdraw it once the FIR has been enlisted. In the author's view, this should be made bailable as well as compoundable in order to spare the organization of marriage in cases where the wife or her relatives realise that they have done blunder by making this particular complaint on petty issues where the husband and/or his family doesn't deserve these. Not only this, but continuation of such criminal proceedings, in cases where the spouses have mutually agreed to end their marriage by common separation, will hamper their lives.

5. In cases, where the court arrives at the conclusion that the allegations made under section 498-A are false, strict action be taken against the persons who have made the complaint, like imposing penalty so as to act as a deterrent against such conduct and to demoralize such persons from coming to courts with not clean hands and malafide intentions.

6. In the cases where it is evident that the investigation officer has not directed a reasonable examination, such officers should be punished for their carelessness.

7. Everybody is required to have some rights, duties, obligations, disregarding their gender. Today, in this social setting that we presently have, we require gender neutral laws in order to secure badgering spouses and their relatives from a corrupt wife.

It is clear that the provision in question was initially added in order to shield the married women against the cruelty that they are being subjected to in their marital homes due to 'n' number of reasons, by her husband and/or his family. Surprisingly, in this modern era, today, the shield is being misused as a sword where it was supposed to be used as a shield by them. It is being used in such ways so as to disturb the men and his family. Even the hon'ble Supreme Court has marked the abuse of the said provision as a legitimate fear mongering and has expressed that there are a number of cases that are visible where the allegations are not true. An examination by the Center for Social Research demonstrates that 98% of such cases are false. In support of these few statistics and suggestions in this article by the author, the author is of the view that it is important by considering the shocking datas relating to section 498-A IPC , Law Commissions reports and recommendations, amendments shall be made in the provision in question.

VI. REFERENCES

- The Dowry Prohibition Act, 1961, No. 28, Acts of Parliament, 1961(India).
- The Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005(India).
- Rakesh Singh Bhadoriya, *Rise Up Women, 498-A*, LinkedIn (May 31, 2021), <https://www.linkedin.com/pulse/rise-up-woman-498-a-rakesh-singh-bhadoriya/> .
- Pavithra KM, *The Conviction Rate of Sec 498A Cases falls as Conviction Rate of IPC Crimes Decreases*, Factly (May 31, 2021), <https://factly.in/the-conviction-rate-of-sec-498a-cases-falls-as-conviction-rate-of-ipc-crimes-increases/> .
- The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974(India).
- The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860(India).
