



MATRIMONIAL CRUELTY- A STUDY OF VARIOUS PROVISIONS UNDER INDIAN LAW

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Abstract:

Marriage is one of the basic tools for starting a family, but the institution of civil marriage has undergone enormous changes in recent decades. First of all, it is necessary to examine what the word "marriage" means, that is, "marriage is a voluntary union for the life of a man and a woman to the exclusion of all others". It is a building that has to be rebuilt every day. Here, in this social institution, the husband has a duty to care for and support his wife. He cannot neglect his duties. But like all positive aspects of an action, there are also negative aspects of an action. In other words, the institution of marriage suffers from a serious social ill like dowry; for which, the husband uses physical and mental cruelty to his wife. Women are abused, molested, killed and divorced for the simple reason that they didn't bring a dowry. In order to protect women's interests from the cruelty to which they are subjected behind the four walls of their marital home, the Indian Penal Code 1860 was amended in 1983 to add Section 498A dealing with spousal cruelty against a woman. However, today in the 21st century, the notion of cruelty that husbands once used on married women has taken on a new color and the tide has turned. With the introduction of this section, over time it came to be seen as "armor" to counter brutality against male members of society, and it became clear that Section 498A, left many loopholes that seemed to become powerful "weapons" if they fell into the wrong hands. This research attempts to analyse the concept of cruelty to women and also examine instances where this particular section is abused through various judgements

Keywords- Sec 498A IPC, Matrimonial Cruelty, Misuse of 498A, Constitutional Validity, Cruelty under Personal Laws

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Introduction:

India, as a multi-layered democratic nation, upholds a constitution that guarantees equality to all its citizens, prohibiting discrimination based on sex, caste, creed, and other factors in social, public, and financial spheres. Notably, Indian women have overcome obstacles and actively participate in various social activities. However, it is disheartening to acknowledge that historically, women have been depicted through derogatory stereotypes, trivializing their true capabilities and reducing them to mere objects of entertainment. Even though India is renowned for its reverence towards women as goddesses, history unveils the darker truth, wherein the virtuous facade of the revered woman was used to reinforce male dominance, subtly impeding the progress of women. Throughout medieval times, women were relegated to subservient roles in society, leading to their marginalization and neglect. Instances like "sati," where widows were compelled to self-immolate on their husbands' funeral pyres, showcase the profound inequality and cruelty women endured. Such practices were rooted in the primitive mindset of a society constrained by conventions and a lack of empathy. Cruelty against women has been an enduring issue throughout history, encompassing both mental and physical abuse. This research aims to explore the impact of cruelty within the context of marital relationships. By delving into this subject, the researcher seeks to shed light on the plight of women who have endured unimaginable suffering within the confines of matrimony. It is crucial for society to recognize the historical mistreatment of women, which perpetuated a culture of cruelty and abuse. Through awareness and understanding, we can strive to break free from these oppressive chains and build a society that truly cherishes and empowers its women. By fostering equality, respect, and protection for all, we can create a more just and compassionate world, where women are valued for their potential and contributions, rather than confined by archaic notions of subjugation.

Under Old English law as indicated by Black stone, a spouse could amend his better half by beating. e.g. a spouse broke the legs of his significant other since she had slighted his guidelines to visit a specific place. In *Holmes v. Holmes*, the spouse, used to hit and abuse his partner and from time to time he demanded sex with her indoors in presence of two men. Regardless, it was assumed that the

spouse did not qualified for any cruelty compensation. That was the bad state of equity then under early English law.

As Manu states, a spouse must do this hit his partner with just a rope or split bamboo, meaning no bones broken at the same time

The Concept of Cruelty:

Cruelty is a conceptual idea, there is no specific definition or clarification given by any legal scholar or judges. Cruelty can take different forms, for example mental, physical, direct or indirect, intentional or unintentional. It is also based on various elements and conditions, such as women's social life, mental and physical conditions, etc. The Supreme Court of India has clarified the idea through various cruelty through various Judgments to name the few given below-

In the case of *Neelu Kohli v. Naveen Kohli*,¹ The Court, at its climax, ruled that with the specific end goal of establishing cruelty, depictions purporting to incite cruelty must be more genuine than conventional of marriage.

In *A. Jayachandra v. Aneel Kaur*,² the Court ruled that in cases of physical cruelty there may be substantial and coordinated corroboration, but in the case of mental cruelty there may be no direct evidence. In the absence of direct confirmation, the courts are obliged to examine the psychological process and the psychological impact of the event presented as evidence.

In the case of *V. Bhagat v. D. Bhagat*,³ the Supreme Court has ruled that psychological cruelty must be such that the gatherings are unreasonable for proper living. To arrive at this conclusion, it is necessary to respect the economic well-being, the level of education of the communities, the general public in which they operate, as well as all other realities and conditions.

In *NG Dastane v. S. Dastane*,⁴ the Supreme Court recognized that a direct allegation of cruelty should be one that creates in the plaintiff reasonable concern that living with the accused is destructive or harmful.

In the historical case of *Samar Ghosh v. Jaya Ghosh*⁵ (2007) the court addressed the concept of "cruelty" and, referring to the Oxford Dictionary, defined cruelty as "the quality of being cruel;

¹ AIR 2006 SC 1675

² (2005)2 SCC 22

³ (1994)1 SCC 337

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⁴ AIR 1975 SC 1534

⁵ (2007) 4 SCC 511

willingness to inflict pain; joy or indifference to a person's pain; implacability; hardness of heart."

Mental Cruelty

The term mental cruelty cannot be put into a straight jacket definition. It cannot be limited not constant as it is phenomenon which changes from the circumstances to circumstances. "This human problem unfortunately exists all over the world"⁶. Changes in lifestyle, education, family patterns, modernization and globalization, and increased use of electronic and social media are some of the many factors responsible for the changing levels of psychological cruelty. What was not considered cruelty in the past is now considered psychological cruelty.

Mental Cruelty as stated by the Court⁷ "Under Section 13(1) (i-a) Hindu Marriage Act 1955 "Mental Cruelty" can broadly be defined as a conduct which inflicts upon the other party, mental pains and suffering as would make it impossible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together"

The term 'mental cruelty' also can be defined as "a ground for divorce, where one spouse's course of conduct (not involving actual violence) creates such anguish that it endangers the life, physical health, or mental health of the other spouse."⁸

In *Siraj Mohmed Khan v. Hafizunnisa Yasin Khan*,⁹ the Supreme Court stated that the "concept of legal cruelty changes according to the changes and advancement of social concept and standards of living".

Some of the factors recognized by the Supreme Court as Mental cruelty are indifference on the part of one of the spouses, constant abuse, regular teasing and taunts, "the severance of marital relations and the husband's acknowledgment that the wife is not chaste.". And soon, just to name a few. In addition, the constant threats of dissolution of marriage and harassment were recognized as reasons for Mental cruelty.

The Supreme court has given a list of examples of Mental cruelty in the case of *Samar Ghosh v. Jaya*

*Ghosh*¹⁰, the Supreme Court gave a list of illustrations which depict mental cruelty. However, this list is not exhaustive.

"Refusal to have intercourse by one spouse without justification may amount to mental cruelty. Denial to have child by one spouse without opinion of another after marriage may amount to mental cruelty. Use of rude language, indifference, sustained abusive and humiliating treatment calculated to torture or render miserable the life of the spouse could amount to mental cruelty."¹¹

Apart from that, it can also constitute psychological cruelty for the husband or wife to per form sterilization or abortion (in the latter case) without the knowledge or consent of the spouse. In the case mentioned here, the husband had sued for mental cruelty because his wife did not cook for him while she only cooked for herself. The Supreme Court recognized the wife's act as an act of mental cruelty.

Section 2(viii) of the Muslim Marriage Dissolution Act also recognizes mental cruelty. The section reads as: "...or makes her life miserable by cruelty of conduct even if the conduct does not amount to physical ill-treatment." Moreover, under in the case of false accusation of adultery, which causes mental torture to the spouse, has been considered as a ground for divorce under Muslim law¹²

Cruelty under Personal laws

Under Hindu law the act of Cruelty was considered as valid ground for judicial separation but not a valid ground for divorce. It was on through the amendment of 1976 the divorce is considered a ground for divorce. The Act states that "The other party has, after the solemnization of marriage, treated the petitioner with cruelty."¹³

Under Muslim law "A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on the ground that the husband treats her with cruelty..."¹⁴

Under Parsi law the word cruelty has been made one of the grounds of dissolution of marriage. The law can be read as- "That the defendant has since the solemnization of marriage treated the plaintiff with cruelty or has behaved in such a way as to

⁶ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511

⁷ *Savitri v. Mulchand*, A.I.R. 1987 Del. 52.

⁸ *Blacks Law Dictionary* (8th ed.). (2004).

⁹ *Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan* (1981) 4 SCC 250.

¹⁰ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

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¹¹ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511

¹² *Diwan, P.* (2013). *Family Law*

¹³ Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India) S.13(1)(ia)

¹⁴ Dissolution of Muslim Marriage Act, 1939, No. 8, Acts of Parliament, 1939 (India) S. 2(vii)

render it in the judgment of the Court improper to compel the plaintiff to live with the defendant.”¹⁵

The Indian Divorce Act provides that “Any wife may present a petition to the District court or the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof (her husband) has been guilty of adultery coupled with such cruelty as without adultery would have entitled her to a divorce.”¹⁶

The term “cruelty” has been read under Special Marriage Act as “The respondent has, since the solemnization of marriage, treated the petitioner with cruelty”.¹⁷

Apart from the personal laws, in order to protect females from violence within the family and to make right to life as guaranteed under Art. 21 of the constitution of India more meaningful, the Parliament enacted Protection of Women from Domestic Violence Act, 2005.¹⁸

Section 498A of IPC

Apart from these personal laws the Indian Penal Code also makes cruelty against women an offence under Section 498A of the Code. The section reads as: “Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.”¹⁹ The nature of offence is non-bailable, cognizable and non-compoundable. It covers not only physical cruelty but also mental cruelty²⁰ in the form of “torture and abnormal behaviour.”²¹

Section 498A however, offers remedy only to the women who are subject to cruelty by their husbands or the family of their husband. The husbands who are subject to cruelty, especially mental cruelty have no remedy under this section.

Constitutional Validity of the Section:

This section was found to be an ultra vires violation of Article 14 as well as Article 20(2) of the Constitution. There is the Dowry Prohibition Act, which also regulates similar cases; Therefore, both laws together create a situation commonly known as double jeopardy. This claim was however, dismissed by the Delhi High Court and stated that this section does not constitute double jeopardy situation. Article 498A differs from Article 4 of the Dowry Prohibition Act as in the latter the mere request for a dowry is punishable and the presence of cruel elements is not required, while Article 498A deals with the serious form of crime. It punishes such demands for valuable property or security from the wife or her relatives that go hand in hand with cruelty to her. Therefore, a person may be prosecuted for the offenses punishable under both the laws²².

In Giiridhar Shankar’s case,²³ it has been determined that some convincing evidence is required to bring charges under Section 498A. There was no such evidence in the file. Therefore, the defendant would need to be acquitted of the charge under IPC Section 498A.

In Nallam Veera Stayanandam’s case,²⁴ Supreme Court ruled that the presumption under Section 113B of Evidence Act available to prosecutors; The first dying declaration is accepted. These conditions assumption is refuted. Unless the prosecution can establish by evidence other than the dying declarations that the cause of death was not accidental, the prosecution's proceedings under Section 304B IPC against the applicants must be unsuccessful. Based on the evidence, the Supreme Court concluded that the defendants' convictions are warranted under Section 498A IPC.

In *Surender v. State of Haryana*,²⁵ the Supreme Court ruled that explicit words need not be used to incite. The offence of abetment depends on the intention of the abettor and not on the act that the instigator committed. A pregnant young woman

¹⁵ Parsi Marriage and Divorce Act, 1936, No. 3, Acts of Parliament, 1936 (India) S.32(dd)

¹⁶ The Indian Divorce Act, 1869, No. 4, Acts of Parliament, 1869 (India) S. 10

¹⁷ Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India) S. 27(d)

¹⁸ Jaiswal, R. (2016). Right to Live with Dignity - A Basic Human Right (With Special Reference to Gender Based Violence and Discrimination). *Australian Law Journal*, 24, 32–36.

¹⁹ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India) S-498A

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²⁰ G.V. Siddaramesh v. State of Karnataka, (2010) 3 SCC 152.

²¹ Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619

²² Inder Raj Malik and others v. Mrs. Sumita Malik 1986Cri L.J 1510(Del.)

²³ Giiridhar Shankar Tawade v. State of Maharashtra 2002 Cri.L.J.814(S.C.)

²⁴ Nallam Veera Stayanandam and others v. High Court of Andhra Pradesh 1996(2) ALT Cri. 191

²⁵ 2007 Cri.L.J.4124(SC)

with a child in her womb would not normally commit suicide unless forced to do so. Therefore, the defendant's sentence was deemed appropriate under Section 306/34 and also Section 498A/34 as there was sufficient evidence of harassment to require the dowry.

In *Ruchi Agarwal v. Amit Kumar Agrawal and others*,²⁶ Supreme Court dismissed the criminal complaint alleging criminal offenses under Sections 498A, 323 and 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act for lack of territorial jurisdiction. It would be an abuse of the legal process if the criminal case giving rise to this resource could proceed.

In the case of *Pawan Kumar v. State of Haryana*,²⁷ the death of the deceased was caused by burns. There was evidence that the deceased was tortured for his dowry. Given the overwhelming amount of evidence of torture and dowry, a presumption arises under Section 113A of the Evidence Act. Therefore, the conviction of the husband and his parents was appropriate under Sections 306 and 498A of the Criminal Code.

In the *Hans Raj*²⁸ case, the Supreme Court concluded that although the prosecution, after examining the facts, failed to establish the offence under Section 306 IPC, the evidence on file supported the defendant's conviction under Section 498A of the IPC.

In the case of *Mohd. Hoshan*²⁹, the Supreme Court stated that determining whether a spouse is guilty of cruelty towards the other is primarily a matter of fact, influenced by various factors like the sensitivity of the victim, social background, environment, education, etc. Psychological cruelty can vary from person to person, depending on their level of sensitivity, courage, and resilience to endure such cruelty. Each case concerning psychological cruelty should be decided based on its own specific facts.

Regarding *Sushil Kumar's*³⁰ case, the Supreme Court ruled that in the absence of evidence showing that the victim was subjected to cruelty or harassment shortly before death, there was no Section 304B offence. As a result, the Section

498A conviction was disqualified, and the matter was set aside.

In the case of *Balbir Singh*³¹, the Supreme Court considered the fact that the victim was rescued by a neighbour. Therefore, the suicide case was dismissed, and the defendant's conviction under Section 302 IPC was upheld as fair. However, due to inconsistencies between two dying declarations, the benefit of doubt was given to the mother-in-law concerning the Section 302 IPC offence. Nonetheless, the Section 498A convictions of both defendants were found appropriate. The court clarified that the mere fact that the declaration of death was not registered by a judge cannot, in itself, be a reason for not believing the prosecution's entire case.

A Critical Analysis

While the aforementioned provisions are intended to protect women from cruelty within marriage, some cases reveal a gross abuse of these laws by certain separated wives for personal interests. They use these provisions as a means to humiliate and dishonour their spouses, and in some instances, their husbands and relatives.²⁹

Section 498-A is a non-bailable, non-compoundable, and cognizable offence where the police can arrest the husband and his relatives directly upon the wife's complaint without prior investigation. Unfortunately, the potential implications and consequences of such complaints on the complainant, the defendant, and their families are not adequately addressed at the time of filing.

In certain cases, the court has positively intervened and resolved complaints when it found improper use of these provisions. For example, in *State of West Bengal v. Orilal Jaiswal*³³, the court recognized mental and physical cruelty on the wife, leading to her suicide. Similarly, in the case of the *State of Karnataka v. C. Prakash*³³, the court considered acts of cruelty by the spouse that resulted in the wife's suicide. In *Jasbir Kaur's* case, the court acknowledged that estranged wives often try to implicate as many of the husband's relatives as possible to salvage the remnants of the marriage. The Supreme Court in *Kanaraj v. State of Punjab* emphasized that the involvement of in-laws or relatives must be established beyond reasonable

²⁶Appeal (Crl.) 1274 of 2004, Arising out of SLP (Crl.) No. 3769 of 2003

²⁷ 2001Cri.L.J.1679 (S.C.)

²⁸ Hans Raj v. State of Haryana 2004Cri.L.J.1759(SC)

²⁹Jain, R. (n.d.). Misuse of Section 498A. *Academia. Eur. Chem. Bull.* 2023, 12(Special Issue 10), 4505–4511

https://www.academia.edu/10027711/Misuse_of_section_498A_in_Indian_society#:~:text=This%20paper%20examines%20a%20judgment%20of%20the%20Supreme,India%20with%20regard%20to%20the%20institution%20of%20marriage.

doubt and not based on mere conjecture or implication.

The Karnataka High Court in *State v. Srikanth* highlighted the need to avoid blanket inclusion of the entire family as suspects and stressed the importance of concrete evidence. The Supreme Court in *Mohd. Hoshan v. State of A.P.* stated that determining whether a spouse is guilty of cruelty is a matter of fact, influenced by various factors such as the sensitivity, background, environment, and education of the victim.

The National Crime Records Bureau publishes the All India Crime data annually, including information on cases registered under various sections of the IPC and their outcomes in court. In conclusion, while these provisions aim to protect vulnerable individuals, it is crucial to address and prevent their misuse to ensure justice and fairness for all parties involved.

It is crucial to recognize that many Section 498-A IPC complaints are filed impulsively and without due consideration on trivial matters. Numerous complaints of this nature are made in bad faith with underlying motives. This abuse of the law has been observed in various cases, raising concerns about its misuse. Interestingly, the provision, originally intended to offer instant protection to women from cruelty, is now being misused to threaten the husband and his relatives. In the case of *Savitri Devi v. Ramesh Chand & Ors*³⁰, the court unequivocally stated that the extent of abuse had undermined the very foundation of marriage and had adverse effects on society. The court stressed the need for authorities and legislators to review the situation and prevent such misuse. There is a growing trend of making exaggerated allegations that implicate every member of the husband's family, exploiting their vulnerable positions for blackmail and bargaining. In response to the escalating misuse of Section 498-A, the Supreme Court, in the case of *Arnesh Kumar's*³¹, directed state governments to ensure that arrests are not made automatically upon registration of a case. Instead, the police should consider a 9-point checklist under Section 41 of the CrPC before making an arrest, evaluating factors like the suspect's conduct and the risk of escape. In the landmark case of *Sushil Kumar Sharma v. Union of India and others*³², the Supreme Court emphasized the aim of preventing dowry through this provision. However, negative media coverage sometimes exacerbates the issue. The question then arises:

what corrective measures can be taken to prevent the misuse of this well-intentioned provision? The fact that the provision is constitutional and valid does not grant permission to unscrupulous individuals to instigate harassment. Legislators may need to find appropriate ways to deal with frivolous complainants and allegations. The courts will have to address the situation within the existing legal framework.

In the case of *Preeti Gupta & Anr v. State of Jharkhand & Anr*³³, it was emphasized that the learned members of the Bar Association carry a significant social responsibility and duty to preserve the harmony and well-being of family life. They must exercise caution to prevent the inclusion of exaggerated portrayals of minor incidents in criminal complaints. As professionals belonging to a noble legal tradition, they should approach Section 498-A complaints as fundamental human issues and sincerely endeavour to assist the parties in finding an amicable resolution. The focus should be on understanding and resolving human problems in a friendly manner. Upholding their duties with utmost competence, they must strive to uphold social peace and tranquillity within society, ensuring that complaints do not lead to unnecessary multiple cases and unnecessary legal disputes.

An important question arises out of the observations made by various Courts as well as the apex Court in this context, as to what should be the role of the Police, Judiciary and the society to solve this problem. Fortunately, the Supreme Court has come to the rescue of all such families who have been falsely arrested on such charges by giving many directions to amend the Law so that it may be used in a legitimate manner to seek justice and not as a means of revenge.³⁴

Recommendation by Reforms of Criminal Justice System

Justice Malimath Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, 2003 stated the following and recommended an immediate change to the law. Some observations given in the report can be summarised as below;

A woman (not necessarily all women) can be much more cruel than a man (not necessarily all men). Although IPC Section 498A is intended to protect one person's life, it puts about a dozen innocent people at risk. Therefore, the provision is discriminatory and violates Article 14 of the Indian

³⁰II (2003) DMC 328

³¹*Arnesh Kumar v. State of Bihar & Anr*, Criminal Appeal no. 1277 of 2014

³²JT 2005(6) 266

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³³Criminal Appeal no. 1512 OF 2010

³⁴Godara, K. (2015). Misuse of Section 498A IPC- Judicial Trend. *International Journal of Research*, 4(9).

Constitution. Instead of restoring balance, the provision exacerbates imbalances. Therefore, the guarantee of the right to life under Article 21 of the Indian Constitution is lacking. For the reasons set out in conclusions 2 and 3, the provision is not only unbalanced but also highly viral. The Malimath Committee proposed changes to this section in 2003, although women's groups and radical feminists opposed such changes. The Centre for Social Research India has published a research report opposing the changes to Section 498A. According to this report, there were no convictions based solely on Section 498A in the cases examined. On July 20, 2005, Justices Arijit Pasayat and H.K. Seema of the Supreme Court of India ruled Section 498A constitutional. The goal is to attack the root of the threat posed by the feat. But an abuse of the provision can trigger a new right-wing terrorism. The layout is intended to serve as a shield and not as a murder weapon. If [the] "wolf" cry is used too often as a joke, help and protection may not be available when the real wolf shows up, the bank said. Any amendment to Section 498A will, to say the least, remove the constitutional mandate of Article. 14 and 15(3); It will be a failure of the state to achieve its intended goal of gender equality. Courts have also upheld the validity of special measures in laws and executive orders that favour women. (e.g. in *Laxman Ram Mane vs. State of Maharashtra*³⁵, *Nripen Roy and others v State of West Bengal*³⁶) It should be added that with the Criminal Procedure Code Amendment Bill (CrPC) of 2010 there are now restrictions on police arrests. ; the arrest can only be made after a proper investigation into the reported matter³⁷

Conclusion:

Marriage is a sacred and enduring bond that demands careful handling. However, the prevalent issues of dowry and cruelty in marriages have plagued our society, leading to the abuse, burning, and even killing of many women. Such acts are unforgivable crimes that require severe punishment. To address these concerns, the Indian Penal Code and the Indian Evidence Code have undergone significant changes. Sections 304B, 498A, and the Domestic Violence Act of 2015 are crucial provisions designed to safeguard women from cruelty by their husbands and in-laws. Despite these efforts, some individuals misuse these laws as a means of perpetrating a new form of right-wing terrorism, causing immense suffering during

criminal proceedings. Even if a court delivers a final acquittal, the shame endured leaves deep scars. Thus, it is vital to view spousal cruelty as a gender-neutral concept, ensuring protection not only for women but also for vulnerable men.

³⁵ 2010 Indlaw SC 217

³⁶ 2010 Indlaw CAL 763

³⁷ Panda, P. (2016). Constitutional Validity of Section 498A of IPC. *Indian Journal of Applied Research*, 6(3). *Eur. Chem. Bull.* 2023, 12(Special Issue 10), 4505–4511