



# One Day District Level Seminar On

1. "Relevance of POCSO for Girl Child in Today's India"
2. "Substantive Gender Inequality in India"

**Speaker :**



**Dr. Shalmali Chakraborty**



**Dr. Ishita Aditya**

**9th March 2020  
12.00 - 1.00PM  
1.30 - 2.30 PM**

**Venue : Physics  
Hall(PH)**

**Organized By :**

**INTERNAL COMPLAINT CELL( ICC)  
& SOCIAL SCIENCE DEPARTMENT  
BEJOY NARAYAN MAHAVIDYALAYA,  
ITACHUNA HOOGHLY.**

# Need of POCSO Act

- Child sexual abuse is on the rise all over the world, particularly in our own country, India, which is one of the top five countries in the world in terms of the number of sexual offenses involving children. In many ways, Indian criminal law appears inadequate to deal with such a sensitive issue.

Thus, POCSO, 2012 was put in place to make it easier for victims of sexual abuse to seek justice. The Act directs the use of more humane methods of dealing with victims and prohibits judicial victimization of children. As a result of increased awareness, the number of such cases reported has more than doubled.

## Salient features:

- The Act is gender-neutral, and it prioritizes the child's best interests and welfare at all stages to ensure the child's healthy physical, emotional, intellectual, and social development.
- The Act defines a child as any person under the age of 18 and considers the child's best interests and well-being to be of utmost importance at all stages, in order to ensure the child's healthy physical, emotional, intellectual, and human growth.
- It defines various types of sexual abuse, such as penetrative and non-penetrative assault, as well as sexual harassment and pornography, and considers a sexual assault to be aggravated in certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by someone in a position of trust or authority over the child, such as a family member, etc.
- People dealing in the trafficking of children for sexual purposes are also punishable under the Act's abetment provisions. The Act provides for harsh punishment that is graded according to the gravity of the offense, with a maximum term of rigorous imprisonment for life and a fine.
- It defines "child pornography" as any visual depiction of sexually explicit conduct involving a child, including photographs, videos, digital or computer-generated images that are distinct from actual children, and images that were created, modified, or modified to appear to portray a child.

# Need of POCSO Act

- The Legislative Process:

The POCSO Act defines sexual assault, sexual harassment, pornography, and the protection of children's interests. It also establishes a child-friendly procedure for recording evidence, investigating and prosecuting offenses, establishing special courts, and expediting case trials. The Act's purpose is to protect children at every stage of the legal process. At first glance, the POCSO Act appears to be an effective piece of legislation for protecting children from sexual offenses. However, there are some theoretical issues with it.

For example, the Act makes no provision for consent given by persons under the age of 18. The Act also leaves open the question of what happens when two minors engage in any kind of sexual activity. Another issue that victims face is proving the age of the child. Because the POCSO Act is passive on what documents are to be considered for determining the age of the child victim, Courts have interpreted Rule 12 of the Juvenile Justice Rules to apply to child victims as well.

- This topic has become a hot topic again in India in view of observation made by Honorable Supreme of India regarding misuse of POCSO Act 2012.

Before delving into issue, we have to look into origin of child marriage. In India, child marriage had been a social tradition since long, especially since the age of Medieval history. When we read biography of various leaders or saint in the past, it came to our notice that many of such leaders or saint got married when they were minor only. One of such example is marriage of Mohandas Karam chand Gandhi, who was married to his wife Kasturba Gandhi, when both of them were minor only. Even in case of Ramakrishna Paramhans also, it was a case of child marriage.

Last few decades also witnessed many burning example of Child Marriage. Who does not know the cases of Dacoit Phoolan Devi, who was married when she was just a minor.? When ever such cases happened, it always resulted in traumatic experience to a female minor, sometimes resulting into her death also. Phoolan Devi also undergone such traumatic experience when her husband tried to consummate. Indian Director Shekhar Kapoor highlighted this aspect of her life in controversial Movie namely Bandit Queen.

Origin of such tradition traces it's origin from the time of attack of foreign invaders. When India was attacked by the foreign invaders, many of Indian woman were married to soldiers of such invaders. Similarly Indians had to fight invaders again and again and Indian woman were to meet the same fate again and again.

- This act hold good even in Modern age also. Often we find that in a family, aged male members tries to sexually harass a female minor. Not only in a case of family relationship, female minor may also be subjected to sexual harassment at playing field, School or any other places. Idea was to protect minor from such harassment.

This act protects a minor from being cajoled by the older ones from entering into sexual activity. In office or society, the older ones who try to persuade a minor for sexual act, they can be convicted for rape charges. In case any complaint is filed against such person, he may be convicted for offence, as a minor is not considered as matured enough to give valid consent.

In order to protect a minor from sexual harassment, Indian Government further enacted POCSO Act 2012 (The protection of Child from Sexual offences Act 2012). This act further strengthen protection of minor. But recently many cases have been reported, in which this Act has been misused.

# Substantive Gender Inequality in India

## INTRODUCTION

In this Seminar, we will discuss the model of equality under the Indian Constitution and the manner in which the courts have expanded the notion of substantive equality while adjudicating over the challenges which were brought before them during the last sixty years. It also examines the inherent dangers within a protectionist approach to women and also the dangers of using a gender-neutral language while claiming rights within a gendered society. Special treatment has historically been a double-edged sword for women. Under the guise of protection, it has been used to discriminate against women. While protection is necessary as an intermediary measure to attain equality, the protectionist approach is laden with an inherent danger of viewing women as minors, imbeciles, or dependents incapable of making decisions for themselves and is reflective of a paternalistic attitude towards women.

## OBJECTIVES

After completing the introduction, you will be able to: • Explain formal and substantive equality; • Evaluate the challenges to discriminatory service conditions; 169 Women's Equality: Formal and Substantive • Learn 'Positive Discrimination' in favour of women; • Analyse the paternalistic approach to the offence of adultery; and • Family law and notions of equality and gender neutrality.

## FORMAL VERSUS SUBSTANTIVE MODEL OF EQUALITY

A formal approach to equality is premised on treating everyone alike or same. Under this approach, any differential treatment as between individuals or groups who are the same would constitute discrimination. In contrast, the focus of a substantive equality approach is not simply with the equal treatment of law but rather with the actual impact of the law. This approach recognises that treating unequal as equals only serves to widen the disparity between the two contesting categories. The formal approach to equality stands in direct contrast to the substantive approach which directs attention to the question of historic and systemic disadvantages. The objective of substantive equality is the elimination of the substantive inequality of disadvantaged groups in society. The shift in focus from sameness and difference to disadvantage helps to broaden the framework of analysis. So instead of viewing Article 15 (3) as an exception to the principle of non-discrimination in Article 15 (1), it is necessary to view it as part of the equality provision itself which does not preclude equality but is rather embraced within it (Kapur and Cossman, 1996, p. 178). Acknowledging the historical disadvantage suffered by women, Article 15 (3) is a departure from the established principle of sameness of treatment and enables the state to make special provisions to protect women. This is a correctional measure of positive discrimination in favour of women (and other disadvantaged groups like children, scheduled castes and scheduled tribes). In addition, the gender-role stereotypes and subordinate and inferior social and economic status also necessitates that the state cast upon women its protective mantle.

# Substantive Gender Inequality in India

## CHALLENGES TO DISCRIMINATORY SERVICE CONDITIONS

This section examines some landmark rulings on issues of employment based discriminatory provisions. Issues concerning discrimination in the public domain of employment were the first to be challenged and had to be tested against the Constitutional mandate of equality during 1970s and early 1980s. They reflected the transition that Indian women were making—from the private sphere of domesticity to the public domain as workers. Issues such as marital status of women workers, their right to have children, gender stereotypes reflected in the age of retirement of women workers, and wage discrimination have been some of the important areas of struggle. The courts attempted to bridge the gap between the dichotomy of women's lives as homemakers and wage earners. The expansion of rights could occur only because some women, who felt violated by discriminatory provisions, dared to approach the courts to challenge the validity of these offensive provisions. They were amply rewarded when these provisions were struck down. But, despite the positive rulings, discriminatory aspects persist and continue to haunt a large number of women workers. The first landmark ruling on this issue was pronounced in late 1970s in *C.B. Muthamma v. Union of India* (AIR 1979 SC 1868) when the Supreme Court was called upon to address the issue of employment related discrimination. Rule 18(4) of the Indian Foreign Services (Recruitment, Seniority and Promotion) Rules, 1961 stipulated that 'No married woman shall be entitled as of right to be appointed to the service'. Further, as per Rule 8 (2), women were required to obtain written permission from the Government before marriage. The rule further stipulated that '...At any time after marriage, a woman member of the service may be required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in the way of due and efficient discharging of duties.' Ms. Muthamma, a senior member of the Indian Foreign Services, challenged these discriminatory provisions as ultra vires Article 14 and 16 of the Constitution. The Supreme Court upheld her contentions and declared that both these provisions were discriminatory against women and thus violative of Articles 14, 15, and 16 of the Constitution and struck them down. While upholding the principle of equality, the court placed women employees at par with men employees. A few years later, yet another landmark case on the issue of discrimination in rules of employment was presented before a three-judge bench of the Supreme Court—*Air India v. Nergesh Meerza* (AIR 1981 SC 1829, also known as the Air Hostess Case). You have earlier read about these cases in MWG002, Block 4, Unit 3. The Supreme Court struck down Air India Regulations relating to retirement and the pregnancy bar on the services of airhostesses 171 Women's Equality: Formal and Substantive as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. However, the Court rejected the challenge to the lower retirement age for female members of the crew on the ground that this cannot be held to be discrimination based only on sex, upholding the stand of the employer that the different ages of retirement and salary structure for male and female employees are based on their different conditions of service and not on sex alone. The impugned Service Regulation 46 provided that an air hostess would retire from the service of the Corporation upon attaining the age of 35 years or on marriage, if it took place within four years of service, or on first pregnancy, whichever occurred earlier. Under Regulation 47, the Managing Director was vested with absolute discretion to extend the age of retirement until the employee attains 45 years.



# Substantive Gender Inequality in India

The argument advanced on behalf of Air India, a Public Sector Undertaking was that the airhostesses 'have to deal with passengers of various temperaments, and a young and attractive air hostess is able to cope with difficult or awkward situations more competently and more easily than an older person with less personal prepossessions' (emphasis added). It was also argued that air hostesses do not stay very long in the service of Air India and that young and attractive women are more inclined to look upon service in Air India as a 'temporary occupation than as a career'. Both the regulations, i.e., Regulations 46 and 47 were struck down as violative of Article 14 which prohibits unreasonableness and arbitrariness.

## 'POSITIVE DISCRIMINATION' IN FAVOUR OF WOMEN

Article 15 (3) enables the state to secure women's rights through special provisions overriding the norm of equality and non-discrimination under Articles 14 and Article 15. The provision of maintenance under section 125 of Cr.PC, special provisions under criminal law regarding arrest and detention of women, and special protection to pregnant women and lactating mothers under labour laws come within its purview. Similarly, setting up of special educational institutions for women and reserving places for women in public transport or places of entertainment do not violate the Constitutional mandate of equality and non-discrimination. Numerous laws have been enacted relating to prohibition of female infanticide, prevention of dowry and dowry related violence, prevention of indecent exposure of women in advertisements and films, prevention of child marriages, prevention of rape and sexual violence, medical termination of pregnancy, prohibition of prostitution and trafficking in women, protection in employment, protecting women against domestic violence and sexual harassment at work place, etc. The decisions of the courts have served as a stimulus for the Indian legislators to enact new laws or to bring about changes in existing ones with a view to affording better protection to women. Reservations for women in panchayats and other self-governing bodies such as municipalities and corporations are protected through this provision. Similarly, legislation that gives tax concessions for women entrepreneurs and reservations for women in educational institutions and government services also come within its purview. There are several other measures, both legislative and judicial, which have served to enhance women's rights. One significant move in this direction has been the introduction of reservations for women in order to increase their political participation. This has been a great boon to Indian women, particularly to women from backward castes and scheduled tribes. The validity of several protective legislations in favour of women was challenged on the ground that they violate the Constitutional mandate of equality, as they 'discriminate in favour of women'. While upholding the validity of these provisions, the courts have relied on Article 15 (3) of the Constitution to defend these positive enactments which aimed to set right the centuries of discrimination suffered by women

# Participants of Seminar :



Number of Participants: 61







# BEJOY NARAYAN MAHAVIDYALAYA

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Ref. No. ....

Date. 27/02/2020

The Principal

Bejoy Narayan Mahavidyalaya

Allowed  
27/02/2020  
Principal  
Bejoy Narayan Mahavidyalaya  
P.O. - Itachuna, Dt. - Hooghly.

**Sub: Organizing a seminar on PoCSO Act and Substantive Gender Inequality in India**

Dear Sir,

With due respect, this is to state that the ICC along with the Department of Political Science, History & Philosophy intend to organize a Seminar on 9<sup>th</sup> March 2020 in the college premises. Dr. Shalmali Chakraborty, Department of Chemistry, Presiding Officer, ICC and Dr. Ishita Aditya, Department of Political Science will deliver lecture on that day.

I, therefore, request you to kindly permit us to organize the seminar on the said date and venue and oblige.

Thanking you

Shalmali Chakraborty  
Associate Professor - ICC  
Bejoy Narayan Mahavidyalaya  
Itachuna, Hooghly.