



## A CRITICAL STUDY ON FUNDAMENTAL RIGHTS AND DUTIES IN INDIA

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### ABSTRACT:

The study on fundamental Rights and duties on the constitution of India. The exploration depends on the major privileges of The native in India. Presently, terms like 'appropriate to training', 'ideal to data' and 'ideal to challenge calmly' are being utilized much of the time. Numerous periods, you additionally feel that you have certain rights. All the while, you may have been told by somebody, maybe your educator, that you have certain obligations towards different people, society, country or humankind. In any case, do you believe that each individual appreciates the rights or everybody plays out the obligations? Maybe not. In any case, everybody will concur that there are sure rights that must be delighted in by people. Especially, in a popularity based nation like our own, there are rights that must be ensured to each native. Thus there are sure obligations that must be performed by equitable natives. Which is the reason, the Constitution of India promises a few rights to its residents. They are known as Fundamental Rights. Additionally, the Indian Constitution likewise enrolls certain center obligations that each native is required to perform. These are known as Fundamental Duties. This exercise targets examining the insights regarding the Fundamental Rights and Fundamental Duties.

**KEYWORDS:** Citizen, rights, duties, fundamental, sovereign

### INTRODUCTION:

The Fundamental Rights and Directive Principles had their beginnings (Kashyap and Kashyap 2009) in the Indian freedom development, which endeavored to accomplish the estimations of freedom and social welfare as the objectives of an autonomous ("THE FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS" 2013) Indian state. The advancement of established rights in India was enlivened by recorded archives, for example, England's Bill of Rights (Biswas, n.d.), the United States Bill of Rights and France's Declaration of the Rights of Man. The interest for common freedoms shaped a significant piece of the Indian autonomy development, with one of the goals (Rai 2011) of the Indian National Congress (INC) being to end separation between the British rulers and their Indian subjects. This (M and di Pepe Lorenzo 2009) interest was unequivocally referenced in goals embraced by the INC somewhere in the range of 1917 and 1919. The requests explained (Ruda 1987) in these goals included allowing to Indians the rights to fairness under the watchful eye of the law, free discourse, preliminary by juries made in any event (Kumar, n.d.) half out of (Bhargava 2008) Indian individuals, political power, and equivalent terms for carrying weapons as (Basu 1959) British citizens.

The encounters of the Second World War, the inadmissible Montagu–Chelmsford Reforms of 1919, and the ascent to unmistakable quality of M. K. Gandhi in the (Donaldson 1989) Indian autonomy development denoted an adjustment in the frame of mind of its pioneers towards articulating requests for



social liberties. The center (Donaldson 1989; Fellmeth 2016) moved from requesting uniformity of status among Indians and the British to guaranteeing freedom for all Indians. The Commonwealth of India (Bhargava 2008; Johari 2004) Bill, drafted by Annie Beasant in 1925, explicitly included requests for seven major rights – singular freedom, opportunity of heart, free articulation of feeling, opportunity of gathering, (Donaldson 1989; Fellmeth 2016; Gerstmann, n.d.) non-separation on the ground of sex, free rudimentary training and free utilization of open spaces. In 1927, the INC (Morales, n.d.) set out to set up a board of trustees to draft a "Swaraj Constitution" for India dependent on a presentation of rights (Johari 2004) that would give shields against abuse. The 11-part board of trustees, driven by Motilal Nehru, was established in 1928. Its (Morales, n.d.; Gledhill 1951) report made various suggestions, including proposing to ensure crucial rights to all Indians. These rights looked like those of the American Constitution (Kashyap and Kashyap 2009) and those received by post-war European nations, and a few of them were (Kumar, n.d.) embraced from the 1925 Bill. A few of these arrangements were later recreated (Tripathi 2016) in different pieces of the Indian Constitution, including the Fundamental Rights and Directive (Maung and Maung 1959) Principles. Aim of the study is to analyse and preserve the fundamental rights and duties of the citizens.

#### OBJECTIVES:

- To analyze the fundamental rights and duties.
- To analyse and to preserve individual liberty
- To Build an equitable society and to establish a welfare state and to safeguard the society and to defend the country.

- To analyse problems existing in equality related issues in our society.

#### Human Rights and Debates in the Constituent Assembly :

A written guarantee of Fundamental Rights in the Constitution of India, envisaging a Constituent Assembly for framing the constitution of India was recognized by the Cabinet Mission in 1946. To this end, a recommendation was made to set up an Advisory Committee for reporting to the Assembly on Fundamental Rights. As per the suggestion of the Cabinet Mission plan, the Constituent Assembly voted to form the Advisory Committee on 24th January, 1947. Sardar Patel was its chairman. The committee was to report to the Assembly on the list of Fundamental Rights, the clauses for the protection of minorities etc. The sub-committee on Fundamental Rights with Acharya Kripalani as the chairman was one of the sub-committees set up by the Advisory Committee. This sub-committee met for the first time on 24 February, 1947, to discuss the drafted list of rights prepared by B.N. Rau, K.T. Shah, K.M. Munshi, Dr. B.R. Ambedkar, Harnam Singh and the Congress Expert Committee, as well as miscellaneous notes and memoranda on various aspects of rights. These lists were lengthy and detailed, as they were accompanied by explanatory memoranda and they contained both negative, as well as positive rights taken from different sources, from both within the country and outside. Balancing individual liberty with social control, the former for fulfilling individual personality and the latter for the peace and stability of society was a very tricky problem. Despite disagreement on technique, there was hardly any difference on principles. So it was decided that the Fundamental Rights should be justiceable.



The Rights to Freedom, provisions abolishing untouchability, protection against double jeopardy, ex-post facto laws, equality before law, the right to freely practice religion and the protection of minorities were all adopted. The English device of prerogative writs, or directions in the form of writs was the legal method, which was included within the rights to secure them. Right to constitutional remedies was also adopted (Lutz and Burke, 1989). Though a few amendments were accepted, the content of rights and basic principles remained intact. The rights were considered to be fundamental and enforceable by courts but they could not be absolute. They could be limited by attaching provision to the particular right and by providing for the rights to be suspended in certain circumstances. Individual liberty, right to equality, basic freedoms etc. were passed with certain limitations. The seven Fundamental Rights had close resemblance with human rights enshrined in various international human rights documents. Members like K.M. Munshi, Ambedkar and K.T Shah were in favour of a more rigorous social programme. So they insisted on a specified time limit within which all the directive principles must be made justiciable. During the debate on the Draft constitution (Nov-Dec, 1948) there were two types of opinions - that the directives did not go far enough towards establishing a socialist state and that they should have placed greater emphasis on certain institutions and principles, central to Indian practice and to Hindu thought, particularly those glorified by Gandhi's teaching. The amendments for development of village life and economy and the panchayat system of village organization, making the promotion of cottage industries a government responsibility, making it incumbent upon the government to prevent the slaughter of cattle and to improve the

methods of animal husbandry and agriculture, amendments calling for the nationalization of various industries are evident of these opinions. However, most of these amendments were voted down or withdrawn by their initiators. Consequently, the directive principles of state policy were adopted as part IV of the Indian Constitution by the Assembly.

### Right to Equality (Art. 14-18)

Right to equality is the cornerstone of human rights in Indian Constitution. While Article 14 states that "the state shall not deny to any person equality before the law and equal protection of the laws within the territory of India," the Article 15 goes to much more specific details that "the state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment. "Whereas, Article 16 states that "there shall be equal opportunity for all citizens in matters relating to employment or appointment to any office under the state."

Article 17 and 18 directs the state to abolish un-touchability and titles respectively (Sehgal, 2004).

### Right to Freedom (Art. 19-22)

The rights to freedom under articles 19-22, are the soul of the human rights in India. Significantly, Article 19 states that "all citizens shall have the right to freedom of speech and expression; to assemble peacefully and without arms; to form associations or unions: to move freely throughout the territory of India; to reside and



settle in any part of the territory of India; and to practice any profession or to carry on any occupation, trade or business."

Whereas, Article 20 says that "no person shall be convicted of any offence except for violation of a law at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence." However, the most important article of human freedom is stated in Article 20, which says that "no person shall be deprived of his life or personal liberty except according to the procedure established by law."

#### **Right against Exploitation (Art. 23-24)**

The Constitution under Articles 23-24, enumerates a list of rights that prohibits exploitation, human trafficking and similar such exploitations. Article 23 prohibits traffic in human beings and beggar and other forms of forced labour. Our Constitution, instead of using the word 'slavery' used a more comprehensive expression "traffic in human beings", which includes a prohibition not only of slavery but also of traffic in women or children or crippled, for immoral or other purposes (Welch and Leary, 1990).

Article 24 of the Constitution prohibits the employment of the children below 14 years of age in any factory or mine or in any other hazardous employment. Thus forced labour is prohibited and children have been protected as a matter of fundamental rights.

#### **Right to Freedom of Religion (Art. 25-28)**

The Part III of the Constitution under Articles 25-28 prescribe for certain religious

freedoms for citizens. They include freedom of conscience of free pursuit of profession, practice and propagation of religion, freedom to manage religious affairs, freedom to payment of taxes for promotion of any particular religion and freedom as to attendance at religious instruction or religious worship in certain educational institutions. In short, these are vital rights of religious minorities in India (Mehta & Verma, 1999).

#### **Cultural and Educational Rights (Art. 29-30)**

Article 29 and 30 of the Constitution guarantee certain cultural and educational rights to the minority sections. While Article 29 guarantees the right of any section of the citizens residing in any part of the country having a distinct language, script or culture of its own, and to conserve the same, Article 30 provides that "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice". In short, these are important rights, as far the protection of human rights of minority groups in a majority society as India.

**In the case Golak Nath v. State of Punjab (1967)** In this case, Golak Nath and his family claimed an excess of 500 sections of land in Punjab. Meanwhile, the state government made an enactment namely, Punjab Securities and Land Tenures Act, 1950 by virtue of which Golak Nath and his family were only allowed to keep an excess of 30 sections of land and not more than that. As a result, Golak Nath filed a writ petition under Article 32 of the Indian Constitution questioning the legitimacy of the enactment and further stating that his fundamental right to property was being violated. The question



before the Supreme Court was whether the Parliament had the ability to revise the Fundamental Rights mentioned under Part III of the Constitution of India or not. The Court ruled that Parliament does not have the power to curtail any of the Fundamental Rights in the Constitution.

### Right to Constitutional Remedies

Chapter III of the Indian Constitution pertaining to Fundamental Rights has a measure of judicial protection and sanctity in the matter of enforcement of these rights. Under Article 32, every person has been given a right to move to the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III. Clause 2 of this Article empowers the Supreme Court to issue directions, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari. This right cannot be suspended except when a proclamation of emergency is in force (Basu, 2007).

**In the case A. K. Gopalan v. State of Madras (1950)** In this case, A.K. Gopalan filed a petition under Article 32 thereby invoking the writ of habeas corpus against his detention. He claimed that such detention violates Articles 14, 19, and 21 of the Constitution and further the provisions of the Act violate Article 22 of the Constitution the Supreme Court of India wherein the Hon'ble Court held that Article 21 of the Constitution shall not require the Indian courts to apply the due process of the standard of law. Further, the Hon'ble Court upheld the validity of the Preventive Detention Act, 1950 except for Section 14, which provided that the reasons for detention given to the detainee or any representation made by him against such reasons shall not be disclosed in a court.

**In the case Indira Nehru Gandhi v. Raj Narain (1975)** This case dealt with election disputes involving the then Prime Minister Indira Gandhi along with the Purpose of the 39th Amendment of the Constitution. The primary question involved in the case was of the validity of clause (4) of the 39th Constitutional Amendment Act, 1975. The Supreme Court, in this case, added certain features as 'Basic Features' to the already existing list of basic features laid down in the Kesavananda Bharati case, such as the rule of law, democracy and judicial review.

### Gender Equality:

Gender inequality constitutes one of the history's most persistent and widespread forms of injustice, eliminating it will call for one of history's biggest movements for change. Women and girls continue to suffer discrimination and violence in every part of the world. Gaps in gender equality exist in every sector. Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful and sustainable world. Goal 5 aims to eliminate all forms of discrimination and violence against women in the public and private spheres and to undertake reforms to give women equal rights to economic resources and access to ownership of property. End all forms of discrimination against all women and girls everywhere. Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation. Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation. Recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of



shared responsibility within the household and the family as nationally appropriate. Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.

#### FUNDAMENTAL DUTIES:

Fundamental duties are obligatory in nature. But there is no provision in the constitution for direct enforcement of these duties. There is no sanction either to prevent their violation. However the importance of fundamental duties can be gauged from the following facts:

a. As rights and duties are the two side of the same coin, it is expected that one should observe one's duties in order to seek the enforcement of one's fundamental rights, in the context if a person approaches the court for the enforcement of any of his fundamental rights, the court may refuse to take a lenient view of him if it comes to know that the concerned individual has no respect for what is expected of him by the state as a citizen of the country.

b. They can be used for interpreting ambiguous statutes. The court may look at the fundamental duties while interpreting equivocal statutes which admit of two constructions.

c. While determining the constitutionality of any law, if court finds that it seeks to give effect to any of the duties, it may consider such law to be 'reasonable', and thereby, save such law from unconstitutionality.

**The court in the case of Javed vs. State of Haryana** held that the fundamental rights have to be read with fundamental duties

which are provided in Article 51A of the Indian Constitution and with the directive principles of the state policy that are provided in Part IV of the Constitution.

**In the case State of Gujarat vs. Mirzapur** the Supreme Court held while considering the provisions regarding Article 48, 48-A and Article 51(g) that the directive principles of state policy and fundamental duties that are provided in Article 51-A of the Indian Constitution plays a significant role while testing the constitutional validity of any statutory provision or of any executive act. The Court also said that the reasonableness of any restriction that is cast by the law on the fundamental rights in the form of regulation, control or prohibition can be tested by taking the fundamental duties and the directive principle of state policy into account.

#### REVIEW OF LITERATURE:

1. **Maung (1959)**. "Fundamental Rights." *Burma's Constitution*. Secondly, according to Article 15, no citizen shall be denied access to shops, hotels and places of public entertainment or the use of wells, tanks, roads and places of public maintained wholly or partly out of State funds are for the use of the general public. However, this principle of equality is maintained if there is a provision for children, women, Schedule caste, Schedule Tribe, and OBC. The third angle of the equality is Article 16 of the Constitution which lays down that there shall be no discrimination in public employment. How can we compare a child born in a rich family, with a child of a poor farmer, who has been discriminated against and who has studied in a dilapidated school 'Dr. B.R. Ambedkar who inspite of being born in a Dalit family was given a scholarship which enabled him to complete his studies. He was made the



Chairman of the Drafting Committee not because he was a Dalit but because he was a renowned jurist.’ The Chapter of Fundamental Rights is a fine embodiment of India’s march towards social justice and individual justice’.

2. **Saumendra Das and N.Saibabu (2014)** “Indian Constitution: An Analysis of the Fundamental Rights and the Directive Principles”. A deep analysis of the fundamental rights and the dpsp makes it amply clear that between constitution and its implications almost the entire field of the universal declaration of human rights are covered .besides the indian constitution through these two parts 3 and 4 has made a novel attempt to balance between enforceable rights and non enforceable rights ,allowing them to compliment each other on the fundamental governance of the country. Finally, both these rights are interrelated and indispensable for the nourishment of others.
3. **Tripathi, Suresh Mani. (2016).** *Fundamental Rights and Directive Principles in India.* diplom.de. Further, other provisions in the Constitution which talk about equality are Article 17 and Article 18 of the Constitution. Discrimination against a Dalit practice is an incorrect and the Fundamental Right under Article 17 of the Constitution has forbidden this practice A public body is not allowed to discriminate against Dalits. In the West Bengal, prior to independence , the title of House of Lord in West was transferred in hereditary in west bengal but this has been abolished under Article 18 of the Constitution of India.
4. **Kumar, Rajesh. n.d.(2016)** *Universal’s Guide to the Constitution of India.* Universal Law Publishing. The Indian Constitution is a social Document. Right to equality, provided

in Article 14, 15, and 16 of the Constitution of India is a triangle of equalities’. Article 14 of the Constitution of India states that there shall be equality before law. The State can't restrict equal protection of laws to any person. Under Article 15 of the Constitution no person can be discriminated on the grounds of religion, race, caste, sex, or place of birth. While there is a provision of special protection for women this is not in violation of Article 14 of the Constitution as there is a reasonable classification as laid down by the Supreme Court of India. Such extensive right to justice and equality and principle of non discrimination against women is not provided to women of other countries around the world except for india.

5. **Vijayalakshmi Rajuj(2018)** Short Note On Fundamental Duties in india. The fundamental duties in the constitution were incorporated by Indian parliament to provide obligations to citizens that must be followed by them. The fundamental duties help the courts to interpret the constitutional provisions and many of the statutes. Although these are not enforceable by courts, there are moral obligations on the citizens to abide by the constitutional duties. The need is to make people aware about their obligations.
6. **Prof. S.A.K. Azad, Annapurna Pattnaik (2020)** Fundamental rights under the constitution of India. The constitution through fundamental justice encompasses the main area of the universal declaration of human rights. “No statue may consist of any law which is incompatible with any of the fundamental rights set out in part 3 of the constitution”, “Social Justice is our constitution’s heart, the state supports economic justice”.

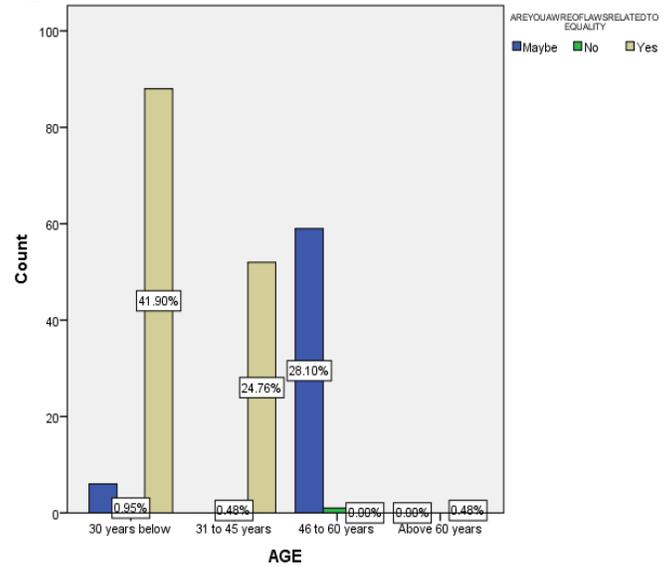


**METHODOLOGY :**

This Research is a non-doctrinal study. The research is completely with positive or negative with is considered in my survey. where majority of peoples answered survey questions mens and womens and they consist of certain questions provided to them engage occupation and different types of questions based on research and my chi square was totally depended on the form of percentage provided. My research was completed in the base data analysis. Total response I got was 210 and which consists of dependent variable as the tribunals based on the liquidators of their power and duties considered. This paper depends on both primary and secondary data. The primary data for the present study is collected using sampling techniques. Random sampling used to collect the primary information from the respondents. Uses of SPSS to analyse the collected datas. The primary data which has analysed using frequencies, and pie charts. The researcher has also utilised commentaries, books, journals, articles, notes, comments and other writings to incorporate the various views of the multitude of jurists with the intention of presenting a holistic view. A survey was conducted through questionnaire method.

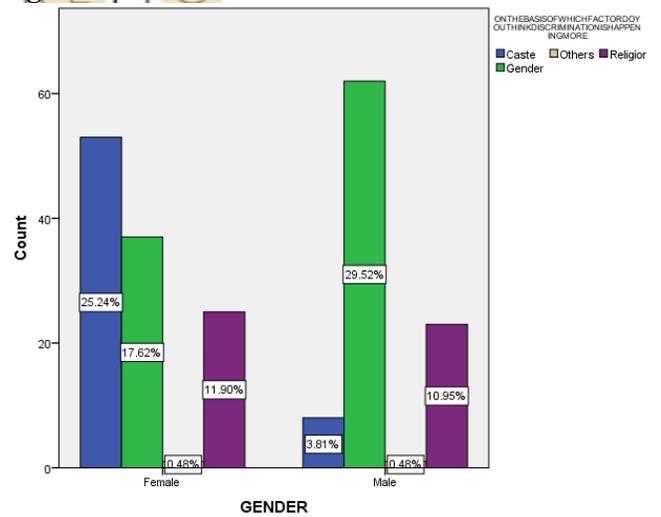
**ANALYSIS:**

**Figure 1**



**Legend:** This figure 1 shows the comparison between respondents age and whether the respondents are aware of laws related to equality.

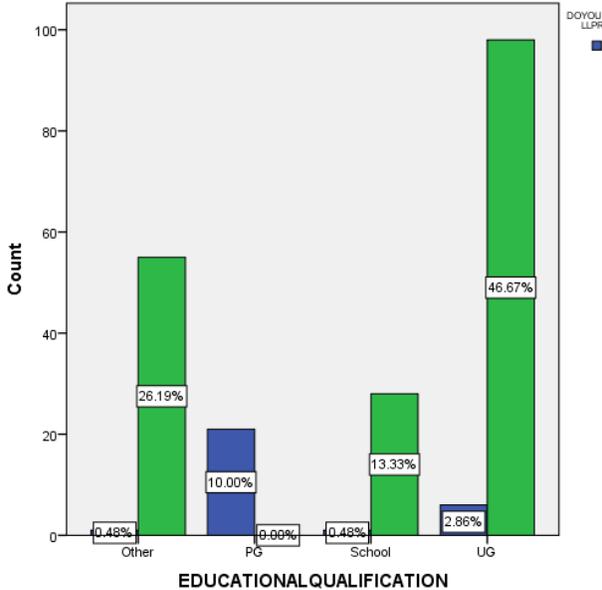
**Figure 2**





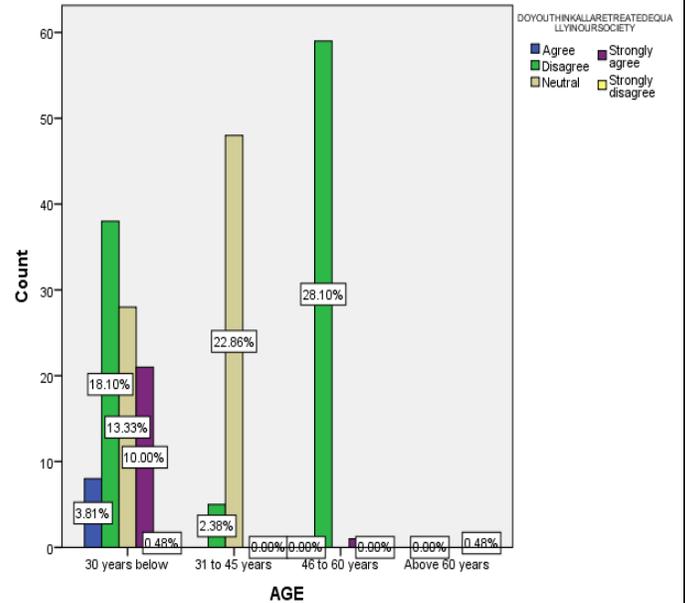
**Legend:** This figure 2 shows the comparison between respondents gender and on the basis of which factor discrimination is happening more.

**Figure 3**



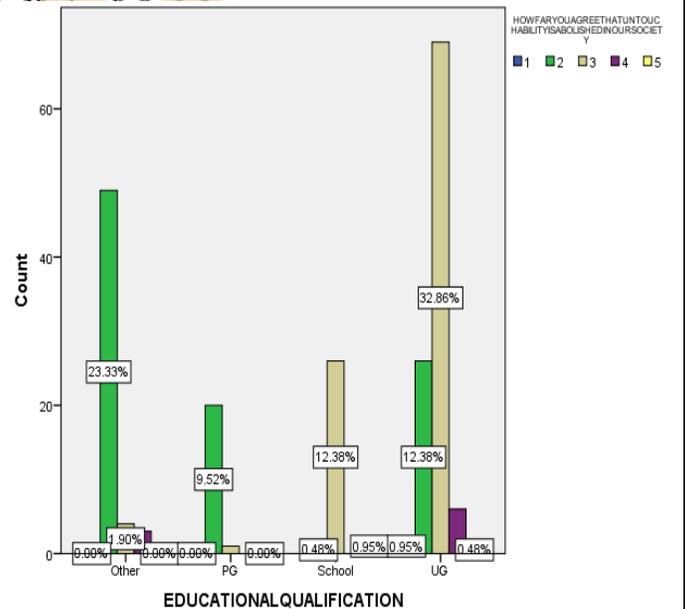
**Legend:** This figure 3 shows the comparison between the respondents educational qualifications and do they think that discrimination is still prevailing in our society.

**Figure 4**



**Legend:** This figure 4 shows the comparison between the respondents age and do they think all are treated equally in our society.

**Figure 5**





**Legend:** This figure 5 shows the comparison between the respondents' educational qualifications and how far they agree that untouchability is abolished in our society.

### RESULT:

In figure 1 it depicts the comparison between respondents age and whether the respondents are aware of laws related to equality for this 41.90% respondents of age group below 30 years has said yes and 0.95% may be, and 28.10% of age group 46 to 60 yrs has said maybe, 24.76% of age group 31 to 45 years has said yes . In figure 2 it depicts the comparison between the respondents gender and on the basis of which factor discrimination is happening more in male respondents 29.52% has said gender ,female respondents of 25.24% has said caste,17.62% of female has said gender,11.90% females has said religion,10.95% males has said religion,3.81% males has said caste.In figure 3 it shows the comparison between the educational qualification and do they think discrimination is prevailing in our society where 46.67% of UG says yes, 23.19% of other says yes,13.33% of school students says yes, 10.00% of PG says no and 2.86% of UG says no. In figure 4 it depicts the comparison between the respondents age and do they think all are treated equally in our society for this 28.10% respondents of age group 46 to 60 years disagree and 22.86% of age group 31 to 45 years has said neutral ,and 18.10% of age group 30 years below has said disagree and 13.33% of age group 30 years below has said neutral, and 10.00% of age group 30yrs below has said strongly agree and 3.81% of age group 30 years below has said agree and 2.38% of 31 to 45 years has said disagree. In figure 5 it depicts the respondents educational qualification and how far they agree that untouchability is

abolished in our society 32.86% of UG has rated 3 and 23.33% of other has rated 2 and 12.38% of UG has rated 2 and 12.36% of school has rated 3 and 9.52% of PG has rated 2.

### FINDINGS:

- 41.90% of respondents of the age group 30 years below have said yes when they were asked whether they are aware of laws related to equality because these generation youngsters are mostly aware about their fundamental rights.
- 29.52% male respondents have said gender based discrimination is happening more in our society.
- 46.67% of UG students has said yes stating that discrimination is still prevailing in our society as we could see in many places.
- 28.10% respondents of the age group 46 to 60 years have disagreed when they were asked if everyone is treated equally in our society.
- 32.86% of UG candidates rated 3 when they were asked how do they agree that untouchability is abolished in our society.

### LIMITATIONS:

The major limitation of the study is the sample frame and the time. Though we had a direct field experience and direct interaction with the public but then a few respondents did not cooperate properly and not all the respondents are literate to know more about the particular issue and as we had a limited time period we couldn't get a more elaborate response.

### CONCLUSION:

A total of 200 samples have been taken out of which is taken through simple sampling. The



sampling frame taken by the researcher is offline. The independent variables taken here are age, gender, education, occupation, marital status. The dependent variables taken here are whether people are aware of laws related to equality, and do you think all are treated equally in our society irrespective of their caste, religion, gender, etc..., on the basis of which factor do you think discrimination is happening more, and do you think discrimination is still prevailing in our society, and how far you agree that untouchability is abolished in our society. As a result we have covered all issues related to fundamental rights and duties.

The Fundamental Rights and Fundamental Duties of the citizens of India address freedom and democracy in the country, and the Directive Principles guide the Government in making laws and policies. Fundamental Rights and duties play an important part in the development of a nation or the growth of an organization. Rights on the one hand give an individual an opportunity to be a part of development process while duties on the other hand make an individual obliged to play a part in the development. Citizenship is not just about enjoying the fundamental rights and performing the fundamental duties mentioned in our constitution but it is about going beyond those duties. Beginning is always tough, we can elaborate it by this example; imagine a case when you are following two way traffic, one fine day this road becomes one way. It will be very difficult to get accustomed to this new change. Later it becomes part of our life; we are not going to think about this option and we become habitual of it. This applies to all these soft duties as well. Rights and duties go hand in hand. Before we complain of the inadequacies of the system and claim our

rights we must also consider our responsibility and fulfill the duties. The Fundamental Rights are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, applied irrespective of race, place of birth, religion, caste, creed, or gender.

### SUGGESTIONS:

Enhancing equality and countering discrimination and Laws, policies and practices more effectively combat discrimination in all forms, and responsible authorities actively work to “leave no one behind”, including by addressing the root causes of inequality. Justice systems and related institutions increasingly monitor and investigate discrimination and provide redress to victims. Legal and social frameworks increasingly promote women’s and girls’ autonomy and choice and protect them from violence, including in the digital space. Judicial institutions, media, and other sectors increasingly recognize and challenge harmful gender stereotypes and gender norms with a view to their eradication. The human rights of all migrants, particularly those in vulnerable situations, are protected. Reducing inequality requires transformative change. Greater efforts are needed to eradicate extreme poverty and hunger, and invest more in health, education, social protection and decent jobs especially for young people, migrants and other vulnerable communities.

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