

ROLE OF THE US SUPREME COURT IN PROMOTING SOCIAL  
JUSTICE AMONG AFRICAN-AMERICANS, 1950- 1970

*Dissertation submitted to Jawaharlal Nehru University*

*for award of the degree of*

**MASTER OF PHILOSOPHY**

VISHWABHARATI KUMAR GUPTA



American Studies Program  
Centre for Canadian, U.S. & Latin American Studies  
School of International Studies  
JAWAHARLAL NEHRU UNIVERSITY  
New Delhi- 110067  
2011



Date 25/07/2011

**DECLARATION**

I declare that the dissertation entitled, "**Role of the US Supreme Court in promoting social justice among African-Americans, 1950-1970**" submitted by me for award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this University or any other university.

Vishwabharati Kumar Gupta

**CERTIFICATE**

We recommend that this dissertation be placed before the examiner for evaluation.

Prof. K.P. Vijayalakshmi  
Chairperson, CCUS&LAS

Prof. Chintamani Mahapatra  
Supervisor

## ACKNOWLEDGEMENTS

*Foremost, I would like to express my sincere gratitude to my supervisor Prof. Chintamani Mahapatra for his continuous and immense support in helping me complete this dissertation. His wide knowledge and his logical ways of thinking have been a source of inspiration for me. His understanding, encouraging and personal guidance have provided a good basis for the present dissertation.*

*Besides my supervisor, I would also like to thank the rest of the professors of my Department, especially the chairperson Prof. K. P. Vijaylakshmi and Dean Prof. Christopher. S. Raj who have been a constant source of inspiration for me.*

*I am thankful to the support staff of my centre, Central Library of Jawaharlal Nehru University, the Library of the Institute of Defense Studies and Analysis and the Library of American information and resource center for their cooperation. Apart from this, I would like to express*

*my sincere gratitude to my senior Priyadarshini Panda who has been a source of motivation and encouragement for me throughout. I also want to thank Mr. Uma Shankar Singh for his support.*

*I would like to thank my friends, classmates, and my family members. Especially I want to thank my parents and my brothers, Amrit, Sagyan and Anand who have stood with me like a rock throughout my dissertation work.*

*For all the errors and omissions in this Research work I am solely to be held responsible.*

*Vishwabharati*

*Vishwabharati Kumar Gupta*

## PREFACE

In US history, the African-Americans have been the victims of racial discrimination since the beginning and have faced lots of difficulties in leading a respectful life. It is because of this, the US Government had to bring in amendments in the constitution in order to remove racial inequality and give them voting rights so that they could lead a good life. The reason why the period of 1950 to 1970 is emphasized for research upon the Supreme Court's role in promoting racial equality is that in this period the Supreme Court gave historic judgments with regard to the inequality and discrimination faced by the African-Americans and also because it was during this period the African-Americans were holding Civil Rights Movement across the country under the leadership of Martin Luther King, Jr. There was an intense situation in US during this period as protests were going on at different places across the country and the African-Americans were targeted by the white racists. In such a scenario, the question arises that why the Supreme Court showed activism in resolving the racial discrimination created in US. This will help us to a great extent in understanding the Supreme Court's historic verdicts in cases like *Brown v. Board of Education*. In the period of 1950 to 1970, US Supreme Court gave many historic judgments which were mainly aimed to bring racial equality and also to end the racial discrimination occurring in the country for a very long time. In order to understand the Supreme Court's role in bringing racial equality and social justice, a thorough study of all the cases with regard to African-Americans brought to the Court during this period is required in order that we can know how did the verdict in those cases helped the African-Americans in getting their due places and rights in American society. Another point to mention over here is that many of the important legislations like Civil Right Act of 1964,

Voting Right Act of 1965 and the Open Housing Act of 1968 came during this period which helped to a considerable extent in bringing racially equal and just society. Apart from them, some executive orders also came during this period in order to give African Americans equal treatment in the society. The major question which arises over here is over the court's role in the legislation of these acts and the major executive orders.

Cases of racial discriminations come to light even today. One example could be a tussle between African-American professor of Columbia University and a white Police officer. The officer didn't allow the professor to enter university residence seeing him to be an African-American which created a major problem. On the other hand we see a very bright picture of racial justice as one of the African-Americans got elected as the President of US. This prompts us to know whether the US Supreme Court got success in bringing racial equality and justice in America and ,if yes, then to what extent.

The following study intends to do the same. This dissertation comprises five chapters. The first chapter looks upon the Race-Relation in US as to how different races like African-Americans, Whites and others coexist in US and also the initial responses of the US Supreme Court towards the condition of African-Americans. The decisions of the US Supreme Court with regard to African American before 1950s would be discussed. The second chapter looks upon how the Supreme Court takes the issue of Race and how it tries to tackle the racial discrimination. The third chapter enlists the historic benchmark decisions taken by the US Supreme Court with regard to the racial equality and social justice between 1950 and 1970. The fourth chapter tries to find out the inter-linkages between the Supreme Court, Civil Right Movement and the Governmental Responses with regard to the removal of racial discriminations. The fifth and the final chapter focus on the overall changes in the social and economic conditions of the African-Americans.

The racial diversity in America is an inquisitive fact and it is quite reasonable to make a study on one of the major race i.e. African Americans. In southern states of America, African Americans are in majority.

# Contents

	Pages
<b>1) Race Relation in the US: Problems of Social Justice.</b>	<b>2-22</b>
1.1) Historical Background	
1.2) Racially Biased Decisions of the Court before 1950s.	
1.3) Dred Scott v. Sandford.	
1.4) Plessy v. Fergusson case.	
1.5) Implications of the Racially biased decisions of the Court.	
<b>2) Responses of the Supreme Court to Racial Discrimination.</b>	<b>24-40</b>
2.1) Court Responses	
2.2) Background to the Brown v. Board of Education.	
2.3) Ramifications of the case of Brown v. Board of Education.	
2.4) Supreme Court's major opinions.	
<b>3) Benchmark Court Decisions on Race Issues.</b>	<b>42-58</b>
3.1) Cases since 1950s.	
3.2) Sweatt v. Painter (1950)	
3.3) McLaurin v. Oklahoma Board of Regents	
3.4) Brown v. Board of Education (1954)	
3.5) Baily v. Patterson (1962)	
3.6) Loving v. Virginia (1967)	
3.7) Jones v. Mayer Co. (1968)	
<b>4) Civil Rights Movement: Court Decisions and Executive Responses.</b>	<b>60-79</b>
4.1) Civil Rights Movement.	
4.2) The impact of the Civil Rights Movement.	
4.3) Government Responses.	
4.4) Civil Rights Act (1964).	
4.5) Voting Right Act (1965).	
4.6) Fair Housing Act (1968).	
4.7) Action of the Supreme Court and the Executive Responses towards the Civil Rights Movement.	
<b>5) Concluding Observations.</b>	<b>81-88</b>



**6) References.**

**89-94**

# CHAPTER- 1

---

# CHAPTER- 1

## Introduction

### Race Relation in the US: Problems of Social Justice

*“Until justice is blind to color, until education is unaware of race, until opportunity is unconcerned with the color of men’s skins, emancipation will be a proclamation but not a fact.”*

--- Lyndon B. Johnson

#### **1.1 Historical Background-**

The United States is a land of settlers from different parts of the world. Right from the beginning when Columbus discovered this wonderful land, different communities started settling in this land, particularly the Europeans. With time, different communities, ethnic groups and the races made their permanent home in this land of charm. A major problem which America has been facing since the beginning is racism prevalent in the society. The prominent form of racism began particularly with the use of slave labor in plantation. Early Africans brought to America were treated equally along with the whites. But with the growth of plantation economy, they started being treated as racially inferior. A kind of stigma had been established against them which led to the beginning of an anti-African racism.

The prevalence of slavery and the racial discrimination along with political and social aspects associated with the African Americans (Blacks) led to race relations being practiced in the US on color lines. The history of African Americans in the US and the kind of

inequality and discrimination faced by them revealed the extent to which the racial division had been established there. (Lee et al, 2003).

In its colonial period, America witnessed thousands of African slaves serving European colonists alongside other European labourers. There were cases in which some African Americans were granted land as well as freedom but such things were quite rare. A few of them turned landowners in the later course. African slaves were primarily put in agricultural activities. The slavery in America was based on chattel principle. Under this principle, slaves were treated as human chattel which could be sold, and ranked not among the being but among the properties. The slaves had no claim to legal protection and therefore they had to tolerate the cruelties of slavery. It was completely based on racial differences that led to racial segregation and dissimilarities. Before American Revolution, slavery was being practiced in almost all the colonies but at the end of the eighteenth century, it was prohibited in the north because of it not being as profitable as in the south. This institution of slavery was extremely important in the economy of America at that time due to the cotton and tobacco plantation in the southern states of America. The impact of slavery expanded beyond the scope of economy. The whites had control over each and every institutional activity. Those who grabbed the economic power also had the control over the political system. The economy and the polity based on slavery had interlinked the legal, educational, religious and the media system. These woven together formed the racist domination of the whites upon the African Americans. (Feagin, 2000).

There is a debate regarding the relation of slavery that whether the slavery practiced in the south was capitalistic or just a small economic system included in the larger capitalism based markets. With regard to this debate, two points have been raised about the slavery in America. They are-

- 1) The larger shareholders were clearly oriented to making profits off their enslaved labourers; and
  - 2) These slave holders always oriented themselves to trading within a capitalistic world market system.
- (Feagin, 2000: 37)

In the second decade of the nineteenth century, American colonial society helped in extension of freedom and equality in the African region. Constitution had banned the new import of African slaves in 1808 and in 1820 and the slave trade started being considered as piracy. Despite these things, the slave trade continued further for next few decades. President Abraham Lincoln declared all slaves staying in the Confederate State of America as not coming under the direct control of the Government of United States and free under the Emancipation declaration issued on January 1, 1863.

In the US Constitution, words like 'race' and 'color' have been mentioned only in its fifteenth amendment which says that no one shall be denied of right to vote just on the basis of race, color or creed by the state or the federal government. This fifteenth amendment was made in the US Constitution in 1870 after a long debate on whether to grant right to vote to the African Americas or not. There were differences in the opinion of the members of the Congress about the ability of the African Americans to cast their vote properly because of their low levels of education. On May 3, 1866 US Senator Jacob M. Howard expressed his opinion about the racial realities existing at that time in the following words-

“ The colored race are destined to remain among us. They have been in our midst for more than two hundred years; and the idea of the people of the United States ever being able by an measure or measures to which they may resort to expel or expatriate that race from their limits and to settle them in a foreign country, is to me the wildest of all chimeras. The thing can never be done; it is impracticable. For weal or for woe, the destiny of the colored race

in this country is wrapped up with our own; they are to remain in our midst, and here spend their years and here bury their fathers and finally repose themselves. We may regret it. It may not be entirely compatible with our taste that they should live in our midst. We cannot help it. Our forefathers introduced them, and their destiny is to continue among us; and the practical question which now presents itself to us is as to the best mode of getting along with them.

The committee were of opinion that the States are not yet prepared to sanction so fundamental a change as would be the concession of the right of suffrage to the colored race. We may as well state it plainly and fairly, so that there shall be no misunderstanding on the subject. It was our opinion that three fourth of the States of this Union could not be induced to vote to grant the right of suffrage, even in any degree or under any restriction, to the colored race. We may be right in this apprehension or we may say be in error. Time will develop the truth; and for one I shall wait with patience the movements of public opinion upon this great and absorbing question. The time may come, I trust it will come, indeed I feel a profound conviction that it is not far distant, when even the people of the States themselves where the colored population is most dense will of suffrage. Sir, the safety and prosperity of those States depend consent to admit them to the right upon it; it is especially for their interest that they should not retain in their midst a race of pariahs, so circumstanced as to be obliged to bear the burdens of Government and to obey its law without any participation in the enactment of the laws.”

(Quoted in Portales, 2003).

Senator Howard very clearly explained the condition of the African Americans and the different ups and downs they were facing since the time they were brought to the US from African Countries by the forefathers of the whites. Howard focused on the need to give voting right to the African American in order to ensure the development of the states. The opinion of Howard was not coinciding with some of the legislators at that time. It was clear that the prospects of color, race or the other conditions were quite visible in the post slavery era to the African Americans and the need to give voting right to the African Americans was realized and due to that fifteenth amendment was

made in the US Constitution in order to keep aside the conditions of color or race line in granting the voting rights to the African Americans. After seventy five years from the adoption of the Constitution in US, there was opportunity with the Congress to make the US Constitution completely neutral towards colour and race. Senator Howard had already discussed about approaching the African Americans in a neutral way without considering about their color. It was quite clear to the Congressmen at that time that getting support for making the constitution totally neutral towards the African American was impossible. It was because of this reason that the debate on bringing about fifteenth amendment to the constitution took seven years to get the particular amendment passed. If the Constitution had been made neutral towards colour or race through either of the fourteenth or the fifteenth amendment, the issue of race would have developed quite differently in the later course. (Portales, 2003).

The thirteenth amendment in the constitution was passed by the US Congress on January 31, 1865 and then ratified by the States on December 06, 1865 which led to the freedom of hundreds of thousands of Africans slaves. The thirteenth amendment of the US constitution says that-

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, nor any place subject to their jurisdiction."

(The Library of Congress website, 2011)

Apart from the thirteenth amendment in the constitution, fourteenth and the fifteenth amendments were also made in the US constitution in order to give political equality to the African Americans. The rights given to the African Americans under these amendments

included free use of public facilities and the public places by the African Americans, right to move, live and work wherever they were willing to, right to vote and to participate in the politics and to serve in the public offices. For many of the southern whites, such political equality given to the African Americans was not acceptable and they, therefore, made a new law called "Jim Crow" in order to escape the conditions created by the thirteenth, fourteenth and the fifteenth amendments in the constitution. The "Jim Crow" law again deprived the African Americans from right to vote and also restricted the right to freedom of association and movement and freedom to join self desired jobs. These restrictions again created the political inequality between the African Americans and the whites. In the later discourse, the Plessy v. Ferguson case reinforced the segregation of African Americans and the whites. The Court upheld the "separate but equal" doctrine and declared it constitutional. (Nickel, 1997).

Majority of the African Americans were living in the Southern states of America. Despite the efforts made towards the ending of slavery in America, the kind of racism prevalent over there could not be stopped because of the existence of many discriminatory practices like Jim Crow Laws, disparities in education and violent acts against the coloured people. The African Americans were living in a critical state of injustice, unfairness and the discrimination. The African Americans were lagging behind the whites in almost every aspects like less income, housing, occupational respect, wealth, education and the political influence. (Brooks, 1990).

In fact, the race relation had become a significant issue that was directly challenging the American democracy throughout its history. In the words of Abraham Lincoln, there were two periods of history in America which threatened to create a house divided in America. Both of these periods would give validity to the issue of race relations in America. The first period was the period of civil war which broke out in



the middle of eighteenth century and the second one was the period of civil rights activism in middle of the twentieth century. The issue of race relation threatened to break the nation when the nation was developing gradually. The slave owning states in the south competed against the non-slave holding states in the north. According to some, economic interest was the prime reason behind the continuing of slavery in the southern states of America. The slaves were the valuable economic resource to the southern states of America.

The late 19<sup>th</sup> and early 20<sup>th</sup> century witnessed increase in the level of racism not only individually but also institutionally particularly against the people of African origin. Imposition of poll taxes, discriminatory laws like Grandfather clauses<sup>1</sup> and the act of terror perpetuated by some racist organizations prevented the African American community from casting their vote i.e. In a way, they were being disenfranchised from voting especially in the Southern states of America. The extent to which discrimination was being practiced on the basis of race in the US was quite surprising. In many states of the US, African Americans used to be excluded from jobs, hotels, motels restaurants, swimming pool and other such public facilities through state laws or customs. Apart from these, African Americans were also excluded from the white schools, not allowed to vote in the party primaries and also in the general election. There was also anti- miscegenation law by which African Americans were not allowed to marry a white and also the whites were not allowed to marry African Americans. (Epp, 2005)

In the past, there was some biased motivated violence in the southern states of America. These acts of violence were tacitly sanctioned by the state and the federal governments. The legalization of the

---

<sup>1</sup> Grandfather clause was made by southern states of America to make the 15<sup>th</sup> amendment of the constitution ineffective and to prohibit the African Americans from voting. Under this clause, those were voters before 1867 did not have to meet the educational, property or the tax requirement. This led to the prohibition of voting right to majority of the African Americans.

institution of slavery by the federal and the state statutes was viewed as an example of state supported violence in the United states of America. These laws subjected the African Americans to violence, death, rape, torture and the exploitation. After slavery came to an end, the Southern states adopted a new law known as “Jim Crow” law. This law being upheld by the US Supreme Court institutionalized the hatred and violence against African Americans in the post Civil War period from 1870 to 1960. (CRS, 2009).

Such discrimination and injustice towards African Americans led to the emergence of some groups like NAACP (National Association for the Advancement of Colored People) in 1909. This phase is generally referred to as the worst phase in the history of American Race relations. In this period African Americans were discriminated at restaurants, hotels, and other public places and also they were being targeted violently. Apart from this, racism made the outburst of national consciousness among the African Americans following the migration of the African Americans from their roots in the southern states to the northern cities. As a result of this the African Americans began to consolidate themselves in groups and ghettos.

Conception in America about race has been of two constituent racial groups mainly African Americans and the whites. This paradigm defines racial discourse but it also limits the sets of problem which may be identified in it. Apart from this, all other racial identities and groups in America are best comprehended through the binary paradigm of African Americans and the whites. Because of this binary paradigm of races, other racial groups are mostly marginalized or avoided. (Perea, 1997).

Using the works of **Hacker** and Juan, F Perea mentions that the exclusive focus on African Americans and the whites is completely intentional and give central attention to the African Americans and the whites. According to Perea, Hacker renders non-white groups invisible

and implicitly characterizes them as passive, voluntary spectators and describes conditions of whites and the African Americans only. He further explains how Hacker considers blackness serves as a crucial function in enabling whites to project themselves as superior and that racial attributes of other races do not pursue this activity. Defying the binary paradigm of races promoted by Hacker, Perea argues that such act ignore other non-white Americans which lead to ignorance by others. Further going through the works of Cornel West, Perea argues that West's work is also basically based on the binary paradigm of the races of African Americans and the whites. Perea further mentions how the binary paradigm of races becomes a hurdle in achieving equality. He argues that the focus on the equality doctrines based solely on the experience of African Americans makes a paradigm which prevents the understanding of the other forms of inequality experienced by other non-white and non-black Americans. He provides three reasons why an exclusive focus on African Americans and the whites is not justified. Firstly, to eradicate all racism rather than just racism faced by the African Americans. Secondly, not to consider racism against Latinos to be less dangerous form of racism faced by the African Americans. (Perea, 1997).

## **1.2 Racially Biased Decisions of the Court before 1950s**

In the US constitution, there were measures which were meant to protect existence of slavery as an institution and that was why in many of the cases the US Supreme Court took decisions which were racially biased. Actually, when the framers of the US constitution were going for its ratification, a debate began whether to give citizenship status to the African Americans (slaves) or not and then they realized that citizenship status to the African Americans would lead to the political majority for the Southern states and also that would increase their strength in the US Congress. To avoid such a situation, they decided through a compromise

known as “Great Compromise” to count an African American (slave) as a three- fifth of a person so as to not to give the Southern states any political advantage. For the geographic counting, the African Americans were started being counted as three-fifth of a person but in practice, they were not treated as a person and they were deprived of the American Civil Liberties, equality and the rights.

### **1.3 Dred Scott v. Sandford**

The case of Dred Scott v. Sandford came to the Court in 1857. The two prominent issue emerged in this case as what status do African Americans (slaves) have in America and secondly what power do the Congress have over the free and the slave territory. An African American named Dred Scott was taken to Illinois by his owner and stayed there for four years and returned back to Missouri after that. After returning, Dred Scott immediately petitioned in the Missouri’s lower Court for his freedom from slavery and he got citizenship thereafter. The Supreme Court of Missouri overturned the decision of the Missouri’s lower Court. When this case finally came to the US Supreme Court, it upheld the decision of the Missouri’s Supreme Court on the ground that Bill of Rights does not apply to African Americans. The Chief Justice Taney took decision in the Dred Scott case under the provisions of the US Constitution. The US Constitution supported institution of slavery under Article 1, Section 2 Clause 3 and Article IV, Section 2, Clause 3. (King, 2010).

Article 1, Section 2, Clause 3 says-

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those

bound to Service for a Term of Years, and excluding Indians not taxed, three fifth of all other Persons.  
(Quoted in King, 2010)

And Article IV, Section 2, Clause 3 says-

No person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or regulation therein, be discharged from such Service or Labour, but shall be up on Claim of the Party to whom such Service or Labour may be due.  
(Quoted in King, 2010).

The US Supreme Court's decision in the case of Dred Scott v. Sandford revealed that African Americans were viewed as too inferior right from the beginning by the Whites of the country and were considered worthless of commanding respect from the white community. (Wallenfeldt, 2011). The US Supreme Court Chief Justice Roger Taney who delivered the judgment in Dred Scott v. Sandford wrote in his judgment.

“ The question before us is, whether the class of person described In the plea in abatement compose a portion of this people, and are Constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word “citizen” in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to the citizens of United States.... They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect.”  
(Quoted in King, 2010).

The Supreme Court ruling in the case of Dred Scott v. Sandford held that African Americans could not become citizens of the United States. The Court articulated that the civilized portion of the world considered African Americans so inferior that they were not bound to respect them.

In this case, Justice Taney's decision revealed Taney's racial exclusion towards African Americans to the extreme. The case of Dred Scott was problem laden because on the one hand it took away the citizenship rights of African Americans and on the other hand, it considered them as a property. (Carbado, 2005).

In another case titled *Pace v Alabama* (1883), an African man named Tony Pace and a white woman named Mary Cox got accused of interracial marriage under which one had to be put in prison for two to seven years. They challenged it in the Supreme Court but the Court upheld the law on the ground that in as much as the law prohibit Whites from marrying the African Americans and African Americans from marrying Whites, it is racially neutral and does not violet the fourteenth amendment.

States of the US made effort to bring about a kind of segregation so as to keep separate place for the Whites. In order to bring it into reality, they took the path of Jim Crow laws which meant adopting the policy of separate but equal. In the aftermath of the Civil Rights

Movement, although the Northern republicans had prohibited slavery, a strained race relation got developed between African Americans and the whites. The private businesses began to refuse to give any goods or services to African Americans. Not only this, there were separate places for African Americans in restaurants and hotels. Apart from these, there were some State governments which refused to implement their own laws when the victims of those laws were mainly from African American community. In addition to it, State governments began implementing voting laws, like literacy test and poll taxes basically designed to suppress the African Americans. Later these cases came to the notice of the Supreme Court. This policy of segregation particularly in the Southern states of America made some African Americans to file suit in the Supreme Court under the provisions of the fourteenth amendment. The Supreme Court heard Civil Right Cases in 1883. The Court came to the

conclusion that the provisions of fourteenth amendment prohibit state from discriminating against the individual on the basis of race but it does not prohibit the individual from discriminating against the other individuals. Because of this finding, the Civil Right Act of 1875 got nullified and the Government became unable to stop segregation in the southern states of America. The court's decision was applicable to the individual cases of discrimination but the issue of segregation was also required to be looked upon.

#### **1.4 Plessy Vs Fergusson Case**

In 1896, a case related to segregation came to the Supreme Court. In 1892, an African American man named Home Plessy tried to sit in a section of the rail car designed for whites only and got arrested and he appealed his case to the Supreme Court. In this case, the Court ruled that the state sponsored efforts at segregation were lawful so long as the services and the accommodation given to African Americans were equivalent in quality and quantity to that of white Americans. This decision of the Supreme Court gave the legitimacy to the doctrine of "separate but equal" and also paved the way for the uncontrolled segregation of African Americans and White Americans in the Southern states of America. The Court's decision in Plessy v. Ferguson case appeared to be as if it was denying racism on the one hand and reinforcing on the other hand. (Motely, 1998). Only Justice John Marshal Harlan, in his lone dissent in Plessy, acknowledged this racist affirmation and correctly predicted its corrosive effect on twentieth century America. This Plessy case supported the racial segregation as an acceptable constitutional policy and compromised unequivocal mandate of racial equality provided by the fourteenth amendment in the public domain. The common people seemed to have developed the idea from the Plessy

decision that the Supreme Court had acknowledged African Americans as inferior human beings who were to be separated from the whites for their own development.

In the Plessy v. Ferguson case, the US Supreme Court ruled that the doctrine of “Separate but equal” was constitutional and did not violate the fourteenth amendment without considering the fact that the facilities provided to African Americans were quite inferior to that of the whites.(Wallenfeldt, 2011). The State of Louisiana has a long history of legislative and legal battles relating to segregation. In 1890 the Louisiana Legislature passed Act 111 that required railroads to have separate rail cars for African Americans and Caucasians. In 1896, Homer Adolph Plessy, was arrested for sitting in the whites only rail car. The case was sent to the United States Supreme Court, and the Louisiana Law was upheld on the basis of “separate but equal” (Mitchell & Salsbury 2000). Justice John Harlan was the only dissenting justice. He stated:

Our Constitution is color-blind, and neither knows nor tolerates classes among citizens... In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott case... The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes by which the people of the United States had in view when they adopted the recent amendments of the Constitution.

(Mikula, 1999, p. 512.)



Plessy v. Ferguson (1896) became the foundation for segregation and went virtually unchallenged for 37 years (Teddlie & Freeman, 2002). The precedent of Plessy v. Ferguson slowly began to be challenged and over time weaknesses in the defense of the separate but equal doctrine began to emerge. An early case, *Gon Lum v. Rice* (1927) in Mississippi, affirmed the Supreme Court's decision in Plessy v. Ferguson. *Gon Lum* was a Chinese girl whose father attempted to enroll her in an all white school. The Court upheld Mississippi's right to classify her as a non-white student citing Plessy v. Ferguson (Whitman, 1993). *Gon Lum v. Rice* is an example of an early case that failed to adequately persuade the courts.

Later in 1933, the NAACP represented Hocutt in North Carolina and filed suit for denying him admission based upon race. The case was dismissed by the Superior Court in North Carolina. This case was the beginning of the challenge to Plessy v. Ferguson (1896) (Teddlie & Freeman 2002).

One of the first cases to successfully challenge the separate but equal doctrine of Plessy v. Ferguson (1896) was *Gaines v. Missouri* (1938). In 1921, Missouri granted out of state tuition for African Americans to attend graduate school to prevent integration since historically black colleges did not yet offer graduate education (Southern Education Foundation, 1974). In 1938, Lloyd Gaines filed suit against Missouri for denying him admission to the University of Missouri Law School. The Court found that separate facilities did not exist, and he could not be denied admission based upon race. The Court ordered that Gaines be admitted to the University of Missouri Law School in a 6 to 2 decision (Trent, 1991).

The Plessy decision delivered by the US Supreme Court was crucial from the point of view of the management of capital as it assured the increase in consumption without effecting the race relation in

the American society. With this judgment of the US Supreme Court, it became possible to keep the right of access for the African Americans but in a segregated manner. The Plessy decision helped in ensuring that the segregation policy was not effecting either the collective or the private consumption or distribution of commodities. (Wilson, 2005).

The Plessy decision was instrumental in ensuring that the consumer based market and the society was not getting effected with the provision of separate facilities for both African Americans and the Whites and also encouraging the more and more engagement of African Americans in the exchange and consumption based society. The US Supreme Court was of the opinion that the “separate but equal’ doctrine was not violating the fourteenth amendment and hence not showing inferiority towards African Americans. The “separate but equal” doctrine allowed African Americans to do the transaction of exchanging the money for the goods. For establishing the superior position of the white people, the transaction of commodities was manipulated according to the need of the white people. In housing consumption in America, the doctrine of separate but equal” could not be applied as the Court declared residential segregation as unconstitutional. In 1917, a case of Buchanan v. Warley came to the US Supreme Court. The US Supreme Court declared the residential segregation as unconstitutional in this case and also retained the ruling given in the case of Plessy v. Ferguson of 1896. In this case, An African American named William Warley was willing to buy a property owned by Charles Buchanan but was not ready to pay for it until and unless he would get full right to reside in that house according to the existing laws. The Supreme Court focused on the right of an individual to buy or sell a property rather than the issue of racial segregation.

Following the Buchanan decision, few states like New Orleans, Richmond and Birmingham thought to retain the ordinance they had had declared for the purpose of racial zoning. The argument behind retaining

the ordinance of racial zoning was that one can buy and own a property without any restriction but access to that property can be denied. Likewise there were eight more such states which adopted segregation ordinances in the face of the Buchanan decision. In the case of Buchanan, the segregation ordinance did not deny the African Americans their right to purchase house in the neighborhood of a white but it denied them the right to occupy that house.

The Inequality between African Americans and the whites were witnessed in the commodity exchange and the consumption but the “separate but equal” race policy promoted the dimension of race. The elimination of former slaves to the holder of money did not abolish the racial oppression which became inseparable from the economy. The later period witnessed a greater contact between African Americans and the whites. The “Separate but equal” policy put a badge of inferiority upon the African American customers. In the division of spaces according to the races, African American consumers could not buy as much respect as the whites received despite of their importance in the economy of the country. African Americans tried to escape the racial insult and the incrimination in the racially divided spaces of exchange and the consumption. (Wilson, 2005).

In order to counteract the insult of the ‘Jim Crow’, African Americans used to purchase the automobiles through personal investment. Another point to mention here was that there were mail order catalogue which used to provide anonymity in purchasing national brands products. The rural free delivery made mail order merchandising highly successful. The African Americans got some anonymity in this regard as they were no more required to travel to the town to get mail and the packages.

The market of the some white merchants got eroded because of this launching of mail order merchandising and therefore they responded by appealing to enhance racist activities. Apart from this, some African Americans resorted to what is considered as “passing” in order to escape the insult and the incrimination. They used to pass as white in order to escape any insult by the whites.

Legislation like the Jim Crow and the zoning restriction and the violence confined African Americans to certain sections of the city and because of it many African Americans zones got developed like Auburn Avenue in Atlanta, 125<sup>th</sup> street Harlem, Beale Street in Memphis and South Parkway in Chicago etc. African American businessmen who competed with white businessmen were considered disrespectful and were also threatened. A white merchant in Memphis charged three African American merchants with the crime of competition with him and also sought their store to be closed in 1892. This incident led to the outbreak of a riot in which all these three African American merchants were killed.

There were several such incidents which showed how African Americans were ill treated in different parts of America. White entrepreneurs had little or no interest in competing with African American entrepreneurs. The white insurance companies were not interested in insuring the African American body which led to the growth of a number of big African American insurance companies. White insurance companies considered insuring African Americans as unwise because of their social diseases, living condition and other unwanted conditions. The African American community lacked the vast scope of economic growth that was available to the Whites in America; in fact, African American commercial districts could never develop localization economies needed for large scale economic activities.

In another case, three African American families in Richmond County faced the closing of the area's only public high school meant for the African Americans. They petitioned in the Court to allow their children to complete their education in the high school meant for the White Americans only. In this case Supreme Court gave a decision which was itself contrary to the "doctrine of Separate but equal". The court established that if there was no school for the African Americans in the particular area, they must live without education.

### **1.5 Implications of the racially biased decisions of the Court**

There were many incidents of the lynching of African Americans between 1895 and 1900 particularly in the southern states of America. A Campaign launched by white supremacist led to the emergence of race riot in Welmington of North Carolina in which dozens of African Americans were killed. Booker T. Washington, an acknowledged leader of the African Americans, requested the African Americans in 1895 to pursue education and the economic development rather than involving in the riots. The racial segregation spread in almost whole of the southern states and Africans Americans were almost entirely barred from voting and from serving on southern juries. (Clarman, 2004).

An important issue which emerged particularly in twentieth century with regard to race relations was the residential segregation. This problem of residential segregation occurred particularly in Southern states. There were such areas where only the African American population (black) was concentrated. In 1880s and 1890s, color line was not so much prevalent in the big cities of Northern America. The racial segregation of residences took place especially after the announcement of "Jim Crow" laws. In the Northern states of America racial segregation took place basically in the

residences of the African Americans and the whites while in the Southern states the stiffening of the racial line led to the hardening of the racial discrimination and the disenfranchisement of African Americans. In the northern states, the racial segregation was more visible as the whites in the north were less concerned about the economic and the political condition of African Americans. As a result of the racial segregation in the north, ghettos of African Americans got developed on racial lines. Some of the cities in Northern states of America visibly developed ghettos like Chicago, New York and Washington. In the twentieth century, the ghetto of African Americans in the North developed mainly because of the migration of the African Americans from the interior of the southern states of America in search of job and for the economic prospects. The migration of the African Americans was so high that the percentage of African Americans which was ninety percent in the southern states in 1900, reduced to slightly more than half of the African majority by 1970. In later course, some of the cities like Gary, Atlanta, Washington D.C and Newark became the major concentration centre of the African Americans and very less of the population of the Whites was there. But this ghettoisation of African Americans was not just because of the demography, rather there was resistance from the whites to not let the African Americans settle in the white's residential regions. Apart from these, some of discriminatory laws like the restrictive covenants, racial zoning ordinance, and residential protection association also forced the African Americans to live in a ghetto which were basically very poor place and lacking in even the basic facilities which were easily available to the white 's residential areas. (Roof, 1979)

The cases related to racial discrimination and the various social and economic aspects related to it make a very prominent point whether social justice got delivered to the racially discriminated people (particularly the African Americans) and also how the Supreme Court



played a role in this regard. There were different dimension related to the racial injustice and the racial discrimination meted out to the African Americans like political, economic and the social by the whites. In political terms, the African Americans could gain a majority and would lead to disadvantage for the whites. In economic terms, whites were looking at them from competitive point of view and used racial means wherever possible to curb the African American competitors in trade. Also, they were not willing to let the exchange and consumption get affected because of the racial practices and that was the reason why they adopted the doctrine of “separate but equal”. In social terms, whites were considering the African Americans as inferior and not at all to their liking.

Race relations in America has been of great significance and shape the American way of living. It is important to study as to how the race relation has been functioning in the American society and how it used to function in the past. The period of 1950 to 1970 surely significant with regard to race relations in America as this period witnessed lots of changes in the American political and social arena.

## CHAPTER- 2

---



## CHAPTER -2

### Responses of the Supreme Court to Racial Discrimination

#### 2.1 Court Responses-

The US Supreme Court is the highest judicial body in the United States which enjoys ultimate appellate jurisdiction over all the state and the federal Courts as well as original jurisdiction over few of the cases. There have been several such cases in which US Supreme Court has taken stand which are contrary to the verdict given by the federal and the state Courts. The History of the functioning of the US Supreme Court have been filled with such Cases that the lower Courts comply with the opinion and the judgment of the US Supreme Court. On the question of Race which has probably been the most striking issue in the American society, the Supreme Court has reviewed its decisions time to time. The major judgment before 1950 in which the US Supreme Court had taken a stand against the African Americans was the Plessy v. Ferguson in which the Court had justified the “separate but equal” doctrine of the states in the USA.

The fourteenth amendment in the US Constitution was made to ensure equal protection to all the races in the USA but it was interpreted in Plessy case as a “separate but equal” doctrine which was actually not at all equal for the African Americans. This fourteenth amendment says-

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

(US Constitution, Article XIV).

Race being a crucial issue in American society became the matter of contention because of the racial prejudices and the racial hatreds against African Americans. Before 1950's, cases like *Dred Scott v. Sandford* (1856), *Pace v. Alabama* (1883), *Plessy v. Ferguson* (1896), *Cumming v. Richmond* (1899) and *Shelley v. Kraemer* (1948) produced judgments against the African American community .

The period after 1950s saw a different US Supreme Court which was delivering judgment much to the favour of African Americans. There were many such cases related to race that the US Supreme Court gave its judgment in favor of the African Americans. The most important and the amazing case was the *Brown v. Board of Education* which was a turning point in the lives of African Americans. *Brown v. Board of Education* was the culmination of a long process of undermining the *Plessy vs Fergusson* case. (Sunstein, 2005).

The judgment given by the US Supreme Court in the case of *Plessy v. Ferguson* in 1896 was totally contrary to the judgment given later in case of the *Brown v. Board of Education* in 1954. In *Plessy v. Ferguson* case, the Supreme Court upheld as constitutional the South's compromise of the equal protection clause of the fourteenth amendment, which incorporated into the constitution equality- before law mandate. (Motely, 1998). The ruling of the US Supreme Court in the case of *Plessy v. Ferguson* which maintained that the action of separation of the railway cars on the basis of race did not violate the fourteenth amendment reveals a failure on the part of the Court in understanding its long term consequences. (Perry, 1999). Because of this case, a new interpretation of the fourteenth amendment came under which there was the doctrine of "separate but equal".

As an outcome of the decision given by the US Supreme Court in Plessy case, most of the Southern states separated African Americans from the whites in places like schools, parks, cemeteries and most of the things which would keep the two races separate from each other. The Plessy decision of 1896 enabling the state to exclude the African Americans from white public institutions, facilities and services was prevalent everywhere in America. This decision sanctioned the de jure racial segregation by the states as a constitutional policy and put the fourteenth amendment at stake which was made to ensure racial equality in the public domain among different races.

Following the decision of the US Supreme Court in the Plessy case, racial segregation took place at a rapid rate. In most of the Southern states, separate school, colleges, hospital and other public institutes were created. Apart from these, several judgments came in the lower Courts which were basically race based and were quite contrary to the interest of African Americans. The Court's majority held: "If civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane." (Quoted in Motely, 1998).

In cases like *Missouri v. Canada* (1938), *Sipuel v. Board of Regents of University of Oklahoma* (1948), *McLaurin v. Oklahoma State Regents* and *Sweatt v. Painter* (1950), The US Supreme Court minimized the legal basis for the doctrine of "Separate but Equal" in the higher education institutes. The Supreme Court did not touch the segregation policy being followed in the primary and the secondary schools until the four years when the case of *Brown v. Board of Education* came to it. The US Supreme Court applied the logic of desegregation in 1954 in the *Brown v. Board of Education* involving five school desegregation cases coming from states like Kansas, Delaware, Virginia, South Carolina and

the District of Columbia and opined that the separate educational facilities for the African Americans were unequal. The verdict of the Court did not provide such a particular relief for the then condition through which the desegregation could take place firmly. The controversy erupted even though the verdict of the Supreme Court did not provide much relief in case of the segregation and got criticized by the leaders belonging to the Southern States. The decision of the US Supreme Court in the case of Brown v. Board of education not only created controversy but also demanded impeachment of the then US Supreme Court chief justice Earl Warren. (Perry, 1999). The leaders of the Southern states also issued the Southern Manifesto and called for the massive resistance against the decision of the Court. A year later, in 1955 when the Brown II case came to the Supreme Court, it could not provide immediate relief with regard to the segregation issue. However, the verdict of the US Supreme Court in both the Brown v. Board of Education 1 (decision of 1954) and the Brown v. Board of Education (1955) cases came as a ray of hope for the African Americans for the change in their status in the American social and the political arena.

The resistance towards the Court's verdict, although, occasional, led to the closure of Schools in Little Rock especially after the intervention of President Eisenhower at Little Rock Central High School and Edward County, Virginia. In these places, public schools remained closed for many years and many "white only" academies got opened and got subsidized by the state governments when the verdict of the US Supreme Court went in favor of desegregation of the public schools. In 1955, when the US Supreme Court again gave its judgment in the favor of the desegregation with all deliberate speed, there began another kind of resistance being shown through the minimal compliance towards the verdicts of the US Supreme Court.

Minimal compliance became a ploy to be used against the African Americans. By minimal compliance approach, the segregationist became able to overcome the legal barrier of intra-racial enrolment but in actual practice, still most of the students remained in segregated schools. In such approaches, even the legal means provided by the states were helping them such as Virginia's State Pupil Placement Board or the racially segregated school patterns meaning the schools in the neighborhood of such residences were mostly segregated.

In 1968, the US Supreme Court ruled in the case of *Green v. County School Board of New Kent County* that the states could enjoy the freedom of choice provided by the Civil Right Act only if they accomplished the task of promoting desegregation. However, the Court found that the New Kent County and the other such districts had not achieved success in the promotion of desegregation and felt the need of other ways like zoning<sup>2</sup> for the purpose of promoting desegregation in practical. The ruling of the Supreme Court was also seen as the direction by the Supreme Court to the districts for the immediate need of promoting desegregation in the schools.

The period between the decisions taken by the US Supreme Court in the *Plessy* case in 1896 and the *Brown* case in 1954 witnessed a series of litigated cases with regard to the higher education. These cases revealed the truth behind the doctrine of "separate but equal". Either there were no facilities for the African Americans or very limited facilities completely unequal to that of the Whites. Those states which were getting influenced by the decisions of the Supreme Court tried to justify and defend their segregated institutes.

---

<sup>2</sup> Zoning was considered as the way of assigning the students to the school rather than using race as the criteria.

When the segregationist policy which was segregating the African Americans from the law school got defeated, new way of promoting and protecting segregation were created. The cases of Sipuel v. Oklahoma and the Sweatt v. Painter revealed the true face of the equality of institution upon their close examination. In the period of its working, the US Supreme Court made major rules but they got avoided by the sub-constitutional means. There was not such clarity whether there is any difference between the law school at the University of Texas and the University of Oklahoma and the newly created law schools for the African Americans students.

The cases which came before the Brown v. Board of Education case were not only the condemnation of the racial segregation but also the broader view of the race in terms of their rational. The cases of Sweatt v. Painter (1950) and the McLaurin v. Oklahoma (1950) clearly put a question mark over such statements which were supporting and trying to establish the fact that the equal education could be achieved within a racially segregated atmosphere.

In the case of McLaurin v. Oklahoma, McLaurin argued that an African American student could not be admitted into the graduate school and this way, the African American students were prohibited from having contact with the white students. In a way, McLaurin was critical of the intellectual racial isolation imposed by the state.

In the case of Sweatt v. Painter, Texas State intended to maintain the segregation at the law school in the University of Texas by opening a law school for the African American students in a hurry without caring about the adequate staff and ill-equipped infrastructure. The Supreme Court gave its verdict in the case of Sweatt v. Painter in 1950 in the favor of Sweatt. The Justice of the Supreme Court felt that new law school for African American (Blacks) did not present the a “legal education

equivalent to that offered by the state to students of other races.” (McNeese, 2007). The decision of the US Supreme Court did not overturn the Plessy decision and the doctrine of “separate but equal” remain in force in the southern states of America. (Clarín, 1998).

By including the criteria of faculty, administration, alumni status, history, community standing and prestige in making its decision, the US Supreme Court managed to redefine the standard for “separate but equal” which created a rippling effect. (McNeese, 2007). The Court’s opinion was as follows:

“We cannot find substantial equality in the educational opportunities offered white and Negro law students by the state. . . . The University of Texas Law School is far superior. . . . A law school, the proving ground for legal learning and practice, cannot be effective in isolation. . . . Anyone who has practiced law, would not choose to study in an academic vacuum, removed from the play of ideas and the exchange of views with which the law is concerned.”  
(Quoted in McNeese)

By handling such cases related to the racial segregation, US Supreme Court revealed the inadequacy of the doctrine of “separate but equal” and also showed how there were inequality in the infrastructure and the staff of the institution created for the African American and the whites. In the case of the Sweatt v. Painter, Court opined against the Texas because of the inequality in the facilities provided to the African Americans and the whites in the law school. . Both the cases of Sweatt v. Painter and the McLaurin v. Oklahoma paved the way for the major judgment of the Brown v. Board of Education. The Brown v. Board of Education took into account the influence segregation might have on the psychology of the African American children and also its effect on the education they would receive in a racially desegregated schools.

## **2.2 A Background to the Brown v. Board of Education-**

The case of Brown v. Board of Education was a prominent case related to African Americans and brought to the US Supreme Court in 1954. In this case, segregation in the public schools on the basis of race came as a major issue. It was Earl Warren's Court which delivered this historic judgment. African Americans, being racially exploited since a very long time, had no hope of improvement in their status found a ray of hope with this judgment.

In fact, it was not the sole judgment till 1954 regarding the African Americans but there were few more cases came before the Court like the Sweatt v. Painter and the McLaurin v. Oklahoma which acted as a background for the major judgment of the Brown v. Board of Education. The Fourteenth amendment in the constitution which was made to bring equal justice under law in order to make equality between the African Americans and the white was interpreted differently when a case of Plessy v. Ferguson came to the US Supreme Court in 1896.

The clause of fourteenth amendment was interpreted as "separate but equal" in order to segregate the African Americans from the whites. After that judgment, segregation took place on a mass base in the whole of the southern states and the northern states in the United States. It was only when the case of Brown v. Board of education came to the US Supreme Court, the segregation in the educational institutions especially the schools got removed legally although it took much longer time for the actual desegregation on the ground. Discrimination based on the basis of race had been raised before but it was not given much attention before.



There were five cases collectively taken as a *Brown v. Board of Education* like *Bolling v. Sharpe*, *Brown et al. v. Board of Education*, *Briggs v. Elliot*, *Davis v. Prince Edward County* and *Gebhart v. Belton* which were heard by the Warren Court while deciding about the constitutionality of the doctrine of “Separate but Equal” and the segregation policy being practiced in the public schools of the United States of America. The first case, *Brown vs. the Board of Education of Topeka, Kansas* (1954), was presented by Robert Carter who argued to the Court that the case was not about the precedent set by *Plessy v. Ferguson* (1896). The schools for blacks and whites had equivalent facilities, curricula, and teachers; additionally, minority students had transportation. While the prior Supreme Court rulings were based merely upon the equality of facilities, Carter argued that the Board of Education, in segregating schools solely on race, violated the equal protection clause of the 14<sup>th</sup> Amendment. Carter frequently cited the ruling in *Sweatt v. Painter* (1950) and also provided evidence that the educational opportunities were inferior to those in whites-only schools. In Carter’s testimony, he quoted the lower court’s finding stating that:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [restrain] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system

(Friedman, 2004:15).

The State of Kansas reluctantly argued for the decision because the Board of Education of Topeka decided not to resist the appeal. The State’s argument was based solely on the fact that the State’s Constitution failed

to violate the 14<sup>th</sup> Amendment (Friedman, 2004). Thurgood Marshall argued the second case in *Briggs v. Elliott* (1952). Marshall was a lead attorney for the NAACP Legal Defense Fund and later served as a United States Supreme Court Justice from 1967 to 1991 (Tachach, 1998). The case from Clarendon County, South Carolina focused on equality in the school system. The lower courts found that Clarendon County failed to provide equal educational facilities, equipment, curricula, and opportunities for all students. Marshall cited the *Morgan* case which was one of the first contradictions to *Plessy v. Ferguson* (1896) in which the Supreme Court ruled that segregation in interstate commerce was unconstitutional. Additionally, Marshall referenced the decision in *Sweatt v. Painter* (1950) where the Supreme Court determined that in graduate education equality went beyond just physical facilities (Friedman, 2004).

The last three cases, *Davis v. County School Board of Prince Edward County, Virginia*, *Bolling v. Sharpe* (District of Columbia), and *Gebhart v. Belton* (State of Delaware) continued to provide additional testimony supporting the end to segregation in education. The primary points continually presented were the inequalities in education, the violation of the 14<sup>th</sup> Amendment and the violation of due process. The arguments to maintain segregation were based upon the State's constitutionality of statutes that were lawful and failed to violate the 14<sup>th</sup> Amendment. The plaintiffs were successful in collectively arguing that the education received at black segregated schools was inferior to white only schools and violated the 14<sup>th</sup> Amendment. Chief Justice Warren addressed the nation with the Court's decision:

“We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated are...deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.”

(Brown v. Board of Education, 1954).

The decision of Brown v. the Board of Education (1954) was not initially thought to impact higher education since the case was based on segregation in elementary and secondary schools. Therefore, higher education was much slower in implementing the Supreme Court's decision, and in many states the Supreme Court decision was ignored. The Supreme Court, through Brown v. the Board of Education (1954) created the opportunity for citizens to challenge higher education desegregation.

Leading the way to integration in the south, James Meredith in early 1961 applied to the University of Mississippi (Ole Miss) and became the first African American to attend an all white college in Mississippi. The integration of Meredith was not without tremendous upheaval, unrest, and riots at the University of Mississippi in Oxford (Cohodas, 1997). Governor Ross Barnett defiantly opposed the integration of Ole Miss and exhausted every legal, judicial, legislative, and political avenue to prevent Meredith's admission to no avail (Cohodas, 1997). President Kennedy ordered over 12,000 army troops to maintain order and provide for Meredith's safety. Meredith graduated in 1963 thereby breaking the racial barrier in Mississippi (Adams, 1993).

In Alabama in 1963, Governor George Wallace stood at the entrance to a building on the University of Alabama campus to personally prevent the integration of the university. President John F. Kennedy then ordered the Alabama National Guard to the University. The National Guard maintained order and provided protection to the African American students while registering and attending classes. In 1965, Vivian Malone Jones became the first African American to graduate from the University of Alabama (Hebel, 2004).

There was massive resistance to desegregation throughout the south following the decision in *Brown v. the Board of Education* (1954). Yet, the momentum was shifting in higher education away from segregation.

Even though all the cases involved in the *Brown v. Board of Education* were concerned with segregation in the public schools, they had a different dimension with regard to the racial segregation, the race based inequality and the doctrine of “separate but equal”. All the cases involved in the *Brown v. Board of Education* came to the Court from different states. These cases basically involved the issue of “Equal Protection clause” of the fourteenth amendment.

### **2.3 Ramifications of the case of *Brown v. Board of Education*-**

Since there had been established the doctrine of “separate but equal” in the United States of America after the *Plessy* case, there had been racial inequality and racial discrimination prevailed all over the states in the US. It was a pretty difficult task to prove the “separate but equal” doctrine racially unjust and discriminatory and to the detriment of the African Americans. There was wide protest against any change in the status quo being maintained after the establishment of the *Plessy v. Ferguson* case. NAACP<sup>3</sup> was the front runner in the case of *Brown v. Board of Education* and was trying to tackle the issue of “Separate but equal”.

NAACP basically raised the issue of the violation of the fourteenth amendment made in the constitution for the equal protection of different races in America. Secondly, they raised the issue

---

<sup>3</sup> NAACP- National Association for the Advancement of Colored People. It was a Civil Right Organization formed in United States in 1909 to remove the racial inequality and the racial discrimination particularly faced by the African American Community.

of racial discrimination and the racial inequality being face by the African Americans and the irrationality behind their implementation of “separate but equal”. The NAACP also discussed about the psychological impact which the racial segregation had on the minds of the African American Children. Apart from these arguments, the feasibility of applying the concept of Plessy in the education sector was also discussed as it was believed that the Plessy case was basically related to the segregation in the transportation sector while the Brown v. Board of Education was related the racial segregation in the higher secondary schools.

Meeting to decide the case, the Justices of the Supreme Court realized that they were deeply divided over the issues raised. While most wanted to reverse Plessy and declare segregation in public schools to be unconstitutional, they had various reasons for doing so. Unable to come to a solution by June 1953 (the end of the Court's 1952-1953 term), the Court decided to rehear the case in December 1953. (US Courts Website). Later, the case was to be heard under Chief Justice Earl Warren who got success in bringing unanimous consensus among the other judges regarding the unviability of the doctrine of “separate but equal” being implemented in the higher education school system. The Supreme Court delivered its most historic ruling on the issue of segregation but did not opt for the immediate implementation of the verdict considering the wide opposition to be faced by the white community in most of the southern and the northern states. The Chief Justice of the US Supreme Court Earl Warren declared:

"We conclude that the doctrine of 'separate but equal' has not place. Separate educational facilities are inherently unequal."

(The US Supreme Court website).

Before the verdict of the US Supreme Court came in the case of Brown v. Board of Education, there were separate schools for the African American

students and the white students in the interior of the southern states and the districts of the Border States. The Court's decision was meant to abolish the segregation in the schools of the southern states. It took time in the implementation of the segregated school system in the southern states after the verdict of the Court came. In the southern states, the officials and the judges responded to the Court verdict in a very hostile environment. The white citizens were quite opposed to the desegregation of public schools in the southern states. Since the Supreme Court struck down segregation only in public schools, its impact was much broader. It helped trigger an all-out offensive against segregation in all spheres of American life, including public services and employment. (David Pitts, 1999). The opinion of the African American could not be taken because they did not have the voting rights. A Brown manifesto was being signed against the verdict of the Court in Brown case 1956 by the members of the congress belonging to the southern states. There were strong opposition from the side of the governors and the officials from the southern states.

In the Brown II decision of the US Supreme Court which came in 1955, Supreme Court extended the freedom to the southern states for the determination of the schedule regarding the implementation of desegregations in the schools. In Brown II, Supreme Court provided its answer and directed schools to desegregate "with all deliberate speed." These four words gave school districts in both the North and the South the mandate to focus their desegregation efforts on the word "deliberate", thus slowing desegregation to a crawl. (Tara J. Yosso, Laurence Parker, Daniel G. Solorzano, Marvin Lynn, 2004).

## **2.4 Supreme Court's major opinions-**

The Jim Crow law in the US led to the practice of segregation in public places and the infrastructure used by African Americans like parks,

restaurants, hotels and even in transportation service. African Americans had to leave the seat reserved for the whites as and when they would come. The US Supreme Court declared unconstitutional the Montgomery bus segregation in 1956. Like it, there was segregation at almost every place in America on the basis of race.

So far as the judgment of the US Supreme Court in case of the *Brown v. Board* was concerned in 1954 in case of *Brown I* and 1955 in case of *Brown II*, Court gave its judgment but did not try to enforce it because of the massive protest against it in the deep south of the United States. The protest was wide spread and the willingness of the executive branch was required to implement the Court decision. There was one such famous instance in which President Eisenhower sent federal troops to Little Rock, Arkansas, after the Governor of the State, Orville Faubus, failed to obey a federal Court order to integrate the school there. (Pitts, 1999).

The Supreme Court handed over the task of enforcing the desegregation in the public schools in the hands of the lower federal Courts. This act of the Supreme Court of transferring the task of enforcing the desegregation in the public schools to lower federal Courts led to some major consequences. At the first instance, the uniformity which Supreme Court could bring in the enforcement of the desegregation in the public school could not accomplished because of it being transferred to the lower federal Courts. Rather it led to the removal of uniformity in the enforcement of desegregation. Since it was the lower federal Courts which had to ensure the task of desegregation in the public schools, it got the limitless power of dismissing the complaint, remitting the African American (black) plaintiffs to administrative remedies, admonishing the school boards to take "positive action" action at some future time, requiring school authorities to submit a desegregation plan to the Court, or actually ordering school boards to admit a certain number of African

American (Negro) pupils to specified white schools by a particular date. (Wilkinson III, 1979).

Between the periods of 1955 to 1968, the Supreme Court did not show much interest towards school desegregation. In this period, it could not be said that the Court did nothing with regard to the racial justice. The Court prohibited segregation in the public facilities other than the school segregation. Not only this, the Court also expanded the meaning of public facilities provided it being under the constitutional limitations. There were demands arising against the NAACP and the revelation of the member of this organization. It was because, the identification of its member led to different kind of restrictions against them ranging from economic sanctions, loss of job, threat towards their life and also showing them a hostile nature in the public.

In 1967, the Supreme Court invalidated the statutes made by the states for prohibiting interracial marriage. There were miscegenation laws in some of the states prohibiting against the marriage between the persons of different races. The fear of mongrelization of races had been reduced by this time to a significant level. So, newspapers had not paid much heed towards this decision of the Supreme Court. Yet these pronouncements, important as they were, failed to touch the real problem, which was understood all along to be school desegregation. The Court spoke mainly when it absolutely had to: at the point of crisis when obstruction was so apparent, delay so prolonged, or violation of constitutional principle so manifest that quiet was no longer feasible. (Wilkinson III, 1979).

The US Supreme Court took historic decisions in the period between 1950 and the 1970. The African American community in the US witnessed a new world which was progressively moving towards the racial equality and racial justice and which was free from all kinds of exploitation. The



changing scenario in the US society could be evident with the fact that the individuals from the African American community started rising in different fields like education, sports and the other areas of interests. The participation of the people from the African American community in national and regional political and social issues also gained momentum. The Court's ruling made changes at various levels and this period of 1950 to 1970 witnessed the outbreak of Civil Rights movement and the enactment of many acts which shall be discussed in further chapters.

## CHAPTER- 3

---

## **CHAPTER- 3**

### **Court Decisions on Race Issues**

#### **3.1 Cases since 1950s-**

In the US history, there have been many instances when the US Supreme Court has taken major decisions which have been proved to be the milestone towards the protection of the democratic rights of the people. Since the US constitution is very brief and, it is the US Supreme Court which interprets and makes wider statements on the articles mentioned in the Constitution. On various issues, the US Supreme Court has taken a stand and they are considered law. The Supreme Court interprets the provisions of the law in order to make public policies. The Court resolves legal questions involving the public policy and takes a proper stand on it. (Baum, 2001).

The decisions of the US Supreme involve few significant aspects like the judgment of the disputes came to it, legal issues involved in that dispute and also the interpretation of the legal issue involved in that dispute. (Baum, 2001). It is the Supreme Court which interprets the constitutional amendments like the fourteenth amendment on issues involving it and gives its final judgment. Before 1950s, many of the judgments of the Supreme Court have been found to be not in favor of the African Americans but period after that has witnessed a series of judgments given by the US Supreme Court in favor of them.

There are many such cases which have led to the changes in the life of the African Americans and the US Supreme Court has played its role decisively with its landmark judgments. The racial inequality had taken its root deeply in the society of America. Even the Governments in different states of America often supported racial

inequality through various means like making different discriminatory laws and rules. In such a scenario the role of the US Supreme Court seemed significant.

The most popular and landmark decision which the US Supreme Court took was in the case of *Brown v. Board of Education* in 1954. Apart from it there were other cases like the *Sweatt v. Painter*(1950), *McLaurin v. Oklahoma Board of Regents of higher education*(1950) etc. These cases are required to be discussed in order to fully understand the judgments delivered by the US Supreme Court.

### **3.2 Sweatt v. Painter (1950)-**

In 1946, there were segregated African American Universities in Texas like Prairie View and Texas State University for the African Americans but no law school was there for the African Americans. In Sweatt case, an African American sought admission to the law school of the University of Texas, in which no segregated school systems were there. All the university had to do was admit him. (Motely, 1998). An African American named Heman Sweat applied for admission in the law course in the University of Texas which was basically a white law school.

In the hope of not admitting Sweatt in the white law school, the Texas state established an African American law school in haste. This new law school established especially for the African Americans was underfunded and nowhere in comparison to the white law school with regard to the facilities and the infrastructure. In such a scenario, Sweatt sued the white law school with the help of the services given by the Thurgood Marshal and the NAACP<sup>4</sup> legal defense and the education fund.

---

<sup>4</sup> NAACP( National Association for the Advancement of Colored people) is an African American Civil Right Organization formed in United States of American in 1909 to ensure the political, economic, social and the

The lower Court did not give judgment in this case for next six month and then denied the Sweatt's admission in the white law school solely on the basis of his race. The decision of the lower Court in Sweatt v. Painter revealed how deeply the racism was being exercised by the state governments to deny admission to the African American students.

Sweatt's argument was that the kind of education provided by the African American law school was not of the same standard as that of the white law school. Further, he argued that the African American students must be admitted to all the white law schools because of the equal protection clause in the fourteenth amendment if there were no law school for the African American students of the same standard as that of the white students.

This case came to the US Supreme Court in 1950 and the Court gave the judgment in the favor of Sweatt citing the fact that there was grave inequality in the condition and the facilities of the white law school and the African American law school. The Court found these two schools to be separate but not equal. The Court directed the State University to take Sweatt in to its institution as a student as the court found this as the only way out to remedy this problem. The opinion of the US Supreme Court was as follows-

“ Petitioner may claim his full constitutional right: legal education equivalent to that offered by the State to students of other races. Such education is not available to him in a separate law school as offered by the State. We cannot, therefore, agree with respondents that the doctrine of Plessy v. Ferguson (1896), requires affirmance of the judgment below”

(Sweatt v. Painter, 1950)

---

educational rights of the African American people and to eliminate the racial discrimination and the racial hatred.

In April 1950, when US Supreme Court gave its judgment in the Sweatt case, the justices maintained that the substantial equality had not been there for the educational institutions of the African Americans. The decision of the US Supreme Court was definitely a change in the stand of the Court from its earlier position. Another case which came to the Court in the same period with regard to the African American was that of the McLaurin v. Oklahoma Board of Regents of Higher Education (1950).

### **3.3 McLaurin v. Oklahoma Board of Regents of Higher Education (1950)-**

This case was also quite important with regard to the racial equality and the racial justice in United States of America. An African American student named George McLaurin got admission in the doctoral program in the University of Oklahoma in 1949. However, there were some restriction for him with regard to his presence and his behavior in the institution. He was required to sit separately in the class and also take his food at a different time table from the rest of the white students. Feeling humiliated with such instruction and the guideline in the institute and also its adverse impact on his academic performance, McLaurin sued against it in the Court in order to stop such things in future. To argue his case, McLaurin took the help of Thargood Marshal and the NAACP Legal defense and Education Fund. Finally this case reached to the US Supreme Court. Observing the adverse effect of such practices on the academic record of McLaurin, Supreme Court ordered the closer of such practices and the permission was given to McLaurin to attend class with the students of other races together and also take his food with them without any discriminatory approach. This case was also quite supportive to the cause of racial justice and the racial equality in America. In this case, a federal

district Court's order led to the admission of an African American student (black) in a white law school but he was segregated from rest of the white students in the class, library and also in the canteen. The US Supreme Court overturned this decision of the federal district Court. This decision of the Court made the way for further litigation against segregation in the schools. (Hunter, 2004).

Cases of both Sweatt and McLaurin were argued before the United States Supreme Court in April 1950 and within two days of each other. Some three months later, on June 5, 1950, the Court rendered its opinions on both cases along with a third transportation segregation case, *Henderson v. United States*. The cases offered a turning point in the legal strategy to undo Plessy. (Brown, 2004). Another prominent case which came to the US Supreme Court was the case of *Brown v. Board of Education* in 1954. Both the decisions of *Sweatt v. Painter* and the *MacLaurin v. Oklahoma Board of Regents of higher education* were critical towards the growing legal struggle against the Jim Crow education. After the Court's judgment on these two cases, the state government could no longer make unequal and discriminatory arrangement for the African Americans. The separate schools were required to be equal in all respect after the judgment of the Court in the two cases of *Sweatt* and the *McLaurin*. Financially and practically, such standard was not achievable in the south in post war period. These two cases also got victory in providing mandated relief for the African Americans. The Court was of the opinion that the relief must be given to the claimant on immediate basis as this case is basically personal and present. In this way, delay could not be made in taking admission of the African Americans. (Martin Jr. 1998).

### **3.4 Brown v. Board of Education (1954)-**

Brown v. Board of Education is considered as the most crucial decision in the history of US Supreme Court. There were five cases involving Brown v. Board of Education namely Brown v. Board of Education of Topeka, Briggs v. Elliot, Davis v. Board of Education of Prince Edward County, Bolling v. Sharpe, and Gehbart v. Ethel. Although a separate decision was given in Bolling case, the cases were heard together by the United States Supreme Court due to the common constitutional issues of racial segregation in American public schools. (Brown, 2004). In May, 1954, the United States Supreme Court unanimously (9 for and 0 dissenting) jolted America with its ruling that school segregation violated the fourteenth amendment. (Tachach, 1998).

The context of all the five cases was different. Brown I segregation was merely permitted, not mandated, only in Topeka, Kansas's largest city. (Motely, 1998). The decision in Brown I found the legal concept "separate but-equal," in violation of guaranteed constitutional protection. The Brown I decision only eliminated the "separate but equal" doctrine established by the Plessy case. The Supreme Court could not issue any guidance regarding the implementation of the decision in Brown I case. (Hunter, 2004). Brown II dealt with the remedy or redress for wrongdoing found in the Court's holding on Brown I. "The opinion in the Brown case began the process of desegregation. (Brown, 2004). The Brown II decision of the US Supreme Court needed the lower Court to look after the proper implementation of the Court's order. (Hunter, 2004). The prominent issue in each of this case was same and was concerning the segregation in public schools on the basis of race. The facts and circumstances of all of the cases were different. While they were all concerned with segregation in public schools, each case provided a



different perspective on racial discrimination and “separate-but-equal” doctrine. (Brown, 2004).

When this case came to the District Court, they ruled in the favor of Schools. Then the appeal was made in the US Supreme Court by the plaintiffs. When these cases came to the US Supreme Court, they clubbed all these cases under the name of Brown v. Board of Education.

Thurgood Marshal personally argued theses cases. His main argument was that the separate school system on the basis of race for the African Americans and the Whites was unequal and unjust and violate an important clause of the fourteenth amendment with regard to the equal protection of all the races. In his opinion, Thurgood Marshal also argued that the segregation on the basis of race in the schools made the African American children feel inferior to the White children and therefore that should be declared invalid and unconstitutional. It was argued that segregation of schools based on race create a kind of disadvantageous situation for the African American children.

When the judges came to decide on the racial segregation in the schools, they found lack of consensus on this issue and therefore no final decision could be made and they referred this case for further hearing on December 1953. Meanwhile, Chief Justice Fred Vinson expired and was replaced by Earl Warren. When the date for next hearing came on the issue of racial segregation, Earl Warren was able to make a consensus on declaring the racial segregation in the public schools unconstitutional.

This case involved three main point of concentration. First was that of the unreasonableness of the racial discrimination. Second was that of the harms of the segregation on the African American children. Third was the irrelevance of the Plessy case as the Plessy case was related to the segregation in transportation and not to the segregation in the schools.

The US Supreme Court declared the doctrine of “separate but equal” as redundant and considered it as useless while delivering its judgment in the case of racial segregation of the public schools. The Court was of the opinion that a sense of inferiority affects the motivation of a child to learn. Segregation backed by the state law, therefore, has a tendency to spoil the educational and mental development of Negro (African American) children and to deprive them of the benefits they would receive in a racially integrated school system. (Motely, 1998).

Chief Justice Earl Warren who delivered the judgment in the case of *Brown v. Board of Education* read out the decision of the Court in following words-

“We come to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive children of the minority group of equal educational opportunities? We believe that it does. We conclude that in the field of public Education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal.”

( Quoted in Stack Jr., 2008).

The ruling of the US Supreme Court in the case of *Brown v. Board of Education* not only overturned the ruling of *Plessy v. Ferguson* and the doctrine of “separate but equal” but it also made the way for the elimination of other discrimination against the African Americans (blacks). The Supreme Court overturned its earlier verdict in the case of *Plessy v. Ferguson* which had legalized the state supported racial discrimination against the African Americans with consensus. The historic victory in the case of *Brown* was the result of continuous battle against racial discrimination at individual and the collective level by the African Americans and the legal battle fought by the NAACP right from

the day it got established. The life of the African Americans got affected mainly with the legal battles fought by the people at various levels against the African Americans which became a part of the five cases of *Brown v. Board of Education*. One such case was that of the Clarendon County of South Carolina in which the segregated schools were the worst in condition in comparison to the other segregated schools in other regions. (Martin, 1998).

There were two *Brown* decisions: the 1954 case declaring segregation unconstitutional and a 1955 case addressing how that declaration would be implemented. Interestingly, both *Brown* decisions avoided legal reasoning for their ultimate authority: *Brown I* case was considered to be a short moral statement while *Brown II* as pragmatic reality coming out of *Brown I* case. (Wilkinson, 1979). The 1954 *Brown* decision avoided from establishing a remedy or issuing a remand. Rather, because of the complex and wide school cases, the question of how desegregation was to be accomplished was postponed until next term. (Wilkinson, 1979).

This landmark decision of the US Supreme Court solved the question of whether the African Americans and the white could receive the education in the integrated system of education or not. The Court's decision in *Brown I* – sweeping, unusually straightforward, simply written, and unanimous- gained the status of a Magna Charta in the black (African American) community. (Motely, 1998). The Supreme Court's decision in *Brown II* dealt with how *Brown I* was to be implemented for the class of plaintiffs as a whole. All five cases were brought as class action. *Brown II* specifically contemplated a merger of the black (African American) and the white public school systems. (Motely, 1998). This case overturned the decision of *Plessy v. Ferguson* which established the “separate but equal” by interpreting the fourteen amendment made in the

constitution. The equal protection clause in the fourteen amendment made in the constitution says,

“All citizens born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.”

([www.sos.wa.gov](http://www.sos.wa.gov))

An eight year old child whose name was Linda Brown had to travel a long distance to attend her class while her white friends had not to do so because of their classes being nearby. The school system in Topeka was segregated on the basis of race and this was legal under the separate but equal doctrine drawn out of the interpretation of the fourteenth amendment in the case of Plessy v. Ferguson.

At the end being disturbed with this fact, Lind’s parents sued in the federal district Court as the facilities for the African American students were not equal to that of the white students. The lower Court gave the judgment in the favor of the school system and agreed with it that if the facilities were equal the African American child was being treated equally with those of the white students as interpreted by the fourteenth amendment. The NAACP encouraged this case and it finally came in the US Supreme Court.

Taking into account the facts of the case and the history of the Court’s thinking on the issue of “separate but equal doctrine”, the US Supreme Court overturned its decision made in the case of Plessy v. Ferguson case. The then chief Justice of US Supreme Court, Earl Warren, stressed the importance of education and put forth his views on how the

education turn the life a child and help him become a good citizen. The Supreme Court under Warren delivered its judgment on the basis of dehumanizing effect of segregation in the public education system. The US Supreme Court used equal protection clause to deliver judgment in the case of Brown v. Board of Education in the same spirit and the intention in which the this clause was added to the constitution. This decision of the Court led to a series of litigation using the equal protection clause as the reference and giving justice to the different class and the communities. (Pitts, 1999).

The Court was of the opinion that the segregation of white and the African American students put a devastating effect on the psychology of the African American students and it becomes more dangerous when it gets the approval of the law and the government. While delivering its judgment, the Supreme Court declared the doctrine of “separate but equal” as unconstitutional and held that to be unequal for the African American students. The judgment of Brown case led to the end of “de jure”<sup>5</sup> segregation in the United States. Another important case which came before the US Supreme Court was that of the Baily v. Patterson. This case also was an important example of racial inequality and the racial injustice.

---

<sup>5</sup> “de jure” segregation was basically the segregation in the public schools on the basis of race between African American students and the white students in America and that being mandated by law and the Government enforcement agencies.

### **3.5 Baily v. Patterson (1962)-**

In this case, there was again a kind of segregation on the basis of race and the color. Some residents of Mississippi brought this case in the Federal District Court on behalf of themselves and the others who were facing the same condition to get the injunction for the enforcement of their constitutional right to enjoy non-segregated inter-state and the intra-state transportation services. They alleged that they had been denied the racially unbiased service of transportation under color of state statutes, municipal ordinances and state custom. The three judge district Court was convened to here this case but they abstained for further hearing in this case.

Finally, the appellants reached directly to the US Supreme Court in order to get judgment in this regard. The appellants argued that they and the others had been the aggrieved parties and also argued that their constitutional right to non -segregated service in the inter-state and the intra-state had been violated because of the “color of state statues, municipal ordinances, and state custom.

The Court ruled that the appellants have the standing to enforce the right to non-segregated transportation services as passengers. Further, the Court was of the opinion that no state can impose or order the segregation on “inter-state or intra-state” transportation services just on the basis of race. The decision of the US Supreme Court with regard to segregation in this case again enforced the principle of non-segregation. Another case related to racial biasness and injustice was that of the Loving v. Virginia of 1967.

(<http://supreme.justia.com>)

### **3.6 Loving v. Virginia (1967)-**

This case was also a typical Civil Right case in which the US Supreme Court declared the anti-miscegenation law unconstitutional. Through racial integrity act of 1924, the Government of Virginia had prohibited the marriage between the people of different races i.e. a person of white race could not marry the person of African American race and similarly the person of African American race could not marry the person of white race. This case also presented an important question whether a statute made by the state to prohibit the marriage between the persons on the basis of race violates the equal protection clause and the due process clause of the fourteenth amendment.

This case began with the marriage between Mildred Jeter, a resident of Virginia and also an African American and Richard Loving, a white man in District of Columbia in June 1958. The Interracial marriage was allowed in District of Columbia but it was not so in Virginia. Soon after they got married, they came to Virginia and settled down here in Caroline County. The Circuit Court issued an indictment against Loving for violating the ban on interracial marriages in Virginia in October 1958. Loving was charged guilty for the violation of ban on the interracial marriage and was sentenced for one year imprisonment. Loving was asked to leave Virginia and not to come here in order to avoid one year imprisonment.

After being convicted, Mildred Jeter and Richard Loving took residence in the District of Columbia. They filed a motion in the state trial Court in October 1963 in order to vacate the judgment given by the Circuit Court of Virginia and to get invalidated the conviction being

meted out to them for one year which they considered to be against the fourteenth amendment.

When the motion which Loving had filed in the state trial Court did not get decided by October 28, 1964, Loving instituted a class action in the United State District Court for the Eastern District Court of Virginia to pronounce the anti miscegenation law of Virginia as unconstitutional. The motion filed by Loving got denial for vacating the sentences on January 22, 1965 by the State trial Court. After this denial, Loving made an appeal to the Supreme Court of Appeal of Virginia.

The Supreme Court of Appeal of Virginia gave judgment against Loving and upheld the validity of the anti-miscegenation law made by Virginia and also affirmed the conviction of Midred Jiter and Richard Loving after some modification. Loving was convicted of violating the section 258 of the Virginia Code which says-

“Living State to evade law- If any white person and colored person shall go out of this State, for the purpose of being married, and with the intention of returning, and be married out of it, and afterwards return to and reside in it, cohabiting as man and wife, they shall be punished as provided in § 20-59, and the marriage shall be governed by the same law as if it had been solemnized in this State. The fact of their cohabitation, here, as man and wife shall be evidence of their marriage.”

(<http://supreme.justia.com>)

Section 259 of the anti-miscegenation law of Virginia say-

“*Punishment for marriage*- If any white person intermarry with a colored person, or any colored person intermarry with a white person, he shall be guilty of a felony and shall be punished by confinement in the penitentiary for not less than one nor more than five years.”

(<http://supreme.justia.com>)



This case finally came to the US Supreme Court for the final judgment on the issue of interracial marriage. The Supreme Court nullified the conviction of the Loving and his African American wife by rejecting the argument of Virginia that law prohibiting both African Americans and the white person from marrying person of another race and imposing the similar kind of punishment to both the races of African Americans and the whites could not be racially discriminatory.

The Supreme Court was of the opinion that the anti-miscegenation law of Virginia violated both the due process clause and the equal protection clause of the fourteenth amendment. The court wrote in its decision as follows:

“Marriage is one of the “basic civil rights of man”, fundamental to our very basic existence and survival.....To deny this fundamental freedom on so unsupportable a basis as the racial classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State Citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discrimination. Under our constitution, the freedom to marry, or not marry, a person of another race resides with the Individual and cannot be infringed by the State.”

(<http://supreme.justia.com> )

### **3.7 Jones v. Mayer Co. (1968)-**

Jones v. Mayer Co., decided by the Supreme Court in 1968, was the first Supreme Court case to rule that the Civil Right Act of 1866 which guarantees the same right of all the citizens to inherit, purchase, lease, sell, hold, and covey real personal property as is

enjoyed by the white - applies not only to the action of the state but also to the private properties. (Mira Tanan and Jones V. Mayor). This case was related directly to the discrimination meted out by an African American couple on the issue of purchasing a property.

Joseph Lee Jones and his wife Barbara Jo Jones wanted to buy a property but they were denied the same because of the race the Joseph Jones belonged to. Mayer, the owner of the property won both in the Eastern District of Missouri and the Eighth Circuit Court of Appeals. Finally this case went to the US Supreme Court and this Court heard this case on April 1 and April 2 of 1968 and the United States Supreme Court granted Certiorari. The case was finally settled out of Court. But the US Supreme Court took a decision in this case as well which was meant to prohibit racial discrimination and the racial inequality.

The various cases which came to the US Supreme Court during the period after 1950s and till 1970s makes a clear view that those cases were coming as a wave of change for the African Americans. The case of Sweatt v. Painter which came in 1950 was a major breakthrough for the African American students who wanted to take admission in non-segregated colleges which was completely denied before this case came to the Court. Further, the case of McLaurin v. Oklahoma state Regents which also came in 1950 was another step towards the removal of segregation based on the race of an individual. Then came the landmark case of Brown v. Board of Education in 1954. This case made it possible for the African American children to study in the desegregated schools and get the same treatment as that of the white childrens.( <http://supreme.justia.com>)

Further, other case related to the issue of race came to the Court and with that the racial inequality and the racial discrimination meted out to the African American children gradually decreased.

Although, it was not so easy, as there were much opposition against the judgment of the US Supreme Court favoring the African American community, they got reduced later and a way for the further promotion of harmony progressed. The judgment of the US Supreme Court in various cases like the Sweatt v. Painter, McLaurin v. Oklahoma board of Regent education, Brown v. Board of education, Baily v. Patterson and the Jones v. Mayor Co. were prominent cases which came to the US Supreme Court between the periods of 1950 to 1970. All these cases paved the way for the establishment of racially just society free of all racial discrimination and the racial inequality faced by the African Americans since a long period of time.

## CHAPTER- 4

---

## CHAPTER- 4

### Civil Rights Movement: Court Decisions and Executive Responses

In the US history, the period of 1950 to 1970 has an important place as lots of changes took place in this period and also there were significant laws and executive orders came. This period witnessed the passages of many crucial acts by the US Congress and also the outbreak of Civil Rights Movement. The reason for this has been found to be the racial discrimination towards the African Americans prevalent in the social and the political arena of the country. The racial discrimination in the different states of the United States led to the exclusion of the African Americans in places like the hotels, restaurants, swimming pools and other such public places. Legal sanctions were also there into the force. There were segregation in the schools and the universities on the basis of race. Also, there were anti miscegenation law into the force which prohibited the African Americans to get marry with the whites and also the whites were not allowed to marry with an African American. Also, there was discrimination towards African American women in terms of selection for a job or for other such thing if in any case she could not cast her vote etc.

The US Supreme Court played significant roles in the establishment of the racial justice for the African Americans through various judgments with regard to race like the Sweatt v. Painter,

McLaurin v. Oklahoma and the major decisions in case of Brown v. Board of Education. This phase in the history of the US Supreme Court was ruled by Earl Warren who advocated the desegregation in the public schools and got the consensus after major effort in the Court premises. The major judgment of the US Supreme Court during this period was the Brown v. Board of Education in 1954 in which the Supreme Court declared the “separate but equal doctrine as unconstitutional and also upturned its verdict given in the case of Plessy v. Ferguson in 1896. Also, it was the Supreme Court’s decision which led the outbreak of Civil Rights Movement. (James Fearson and David Laitin).

The US Supreme Court was in favor of the Civil liberties particularly after the Earl Warren became the Chief Justice of the US Supreme Court. His tenure was from 1953 to 1969. The period of 1960s was quite different for the US Supreme Court under Earl Warren as it was Warren’s policies which affected the Court the most although the other judges also contributed towards it. Other judges who were quite effective were Hugo Black and William Douglas and William Brennan. The landmark decision which US Supreme Court delivered under the Chief Justice Earl Warren was the Brown v. Board of Education in 1954. The US Supreme Court also extended its support to the African Americans (blacks) in the availing of their rights in other policy areas. (Baum, 2001).

In the Northern states of America, federal district judges were not that much against the Court and rather they were supporting the Court. The opposite was the case in the southern states of America. There were measures adopted by the Courts to implement the desegregation policy in the public schools like busing even though there was local protest against it. In one such case, a judge ordered for the property tax imposition at higher rate in order to facilitate for the improvement in the schools and the proper implementation of the desegregation policy in Kansas City. In the northern states of America, district schools adopted crucial measures

to implement the desegregation policy with the pressure exerted by the federal government and the Court's order. In maximum cases, districts schools in northern states implemented the Court order rather than resisting it. The interest of some of the judges in the implementation of the school desegregation increased the desegregation at higher rate. The implementation of the school desegregation took place in different region at different degree. With the help of other two branches of the Government, the implementation of the desegregation policy in the interior of the southern states was quite successful. The states in the border region also got success to a major extent in the implementation of the desegregation policy. In the northern states of America, major changes occurred in the school desegregation practices with the help of the Court. (Baum, 2001).

#### **4.1 Civil Rights Movement-**

Civil Rights Movement of United States had its roots in the long drawn effort towards the abolition of slavery. Although, the slavery got abolished but the discrimination and the unequal treatment was still there in US. The Civil Right Movement was erupted against the unequal and unjust treatment of the African Americans (Black Americans). (Susan Wright, 2006). The African Americans were having grievances against the discriminatory approach adopted towards them and were devoid of the economic opportunities and the other fundamental rights which the whites were enjoying there in the south. These grievances and the unequal treatment towards them became the major cause of the Civil Right Movement. In the beginning the African American leaders were holding their movement and their protest in a non-violent method but later when the conflict increased and the scope of the movement widened, they resorted to violence which was happening occasionally. The African

American leaders were using the non-violent method to protest but their efforts led to the rise of violence. (James Fearon and David Laitin). The decision of the US Supreme Court in the case of *Brown v. Board of Education* played crucial role in informing the people about the Civil Right Movement and acknowledged the achievement of the Civil Right Movement. The earlier decision of the US Supreme Court in the case of *Plessy v. Ferguson* was about the civil rights in transportation and not the education. It was the *Brown* decision which basically talked about the civil rights in education. *Plessy* decision declared the “separate but equal” doctrine as constitutional. (Robert Cassanello, 2007).

The Civil Right Movement of 1950s and 1960s led to the end of segregation of the public facilities being implemented on the basis of race in the southern states of America. The major achievement of the Civil Right Movement had been the legislation of the equal right for the African Americans. This movement had also been seen as a struggle for the reform in the economic, political and the cultural emancipation of the African Americans apart from the civil rights legislation. (Jeff Wallenfeldt, 2011).

In 1950s and 1960s, groups like National Association for the advancement of Colored people (NAACP) and Southern Christian Leadership Conference (SCLP) led the Civil Rights Movement and endeavored strongly to raise the issue of Jim Crow law and other kinds of racial discrimination faced by the African Americans. Martin Luther King, the with the association of other fellow Americans strongly addressed the issue of injustices faced by the African Americans and also the discrimination faced by them which were against the principle of “equal justice under law” as given in the constitution.(CRS, 2009). During the period of 1960, the African Americans (blacks) became more aware of the kind of institutional racism being practiced against them and being used in their oppression and the discrimination.(Blauner, 1989).



During World War II, mass migration of the African American took place from the southern states of America to the urban areas of North America. This led to the eruption of housing problem and also job competition enhanced among the whites and the African Americans. This phase witnessed outbreak of racial riots in the urban areas. When the World War II got over, African Americans resolved to fight against racism. The campaign which the African Americans started against racism was considered as the Civil Right Movement which spread all around in the decades of 1950s. NAACP fought in the Court with tough stand against the segregation in public places on the basis of race, restriction involved in the housing, segregation in the transportation and also the discriminatory approach adopted towards the African Americans in the recreational facilities. The US Supreme Court delivered its historic judgment in 1954 in the case of Brown v. Board of Education. In this case, Supreme Court reviewed its earlier judgment given in the case of Plessy v. Ferguson and declared the segregation in the public educational institutional as illegal. Against this judgment of the Court, rioting started taking place especially by the white Americans. In Little Rock, public schools got closed mainly due to the rioting by the white students against the admission of nine African American children in the white school. President Eisenhower had to dispatch the forces in order to protect the students from any untoward happening because of the riots. African Americans achieved major success in Montgomery by their non-violent method under the leadership of Martin Luther King, Jr. This began particularly with the refusal of leaving the seat by an African American lady named Rosa Park for a white passenger in a segregated bus on first of December in 1955. The Supreme Court ruling in this case against the segregation in the public transportation buses in Montgomery diffused the protest led by the whites against the African American's demand for desegregation. (Jeff Wallenfeldt, 2011).

Under Martin Luther King's guidance, Southern Christian Leadership Conference was constituted in order to streamline the Civil Right activities in 1957. The segregation in the lunch counter and the variety drug store in the southern states were forced by the sit-in by the students to stop and got desegregated in February 1960.

Student non- violence coordinate committee (SNCC) was also constituted in April 1960 by the leaders of the sit- in movement. Also, Freedom Rides were organized by the Congress of Racial Equality (CORE) in Alabama and Mississippi in 1961. All NAACP, SCLC, SNCC and the CORE worked closely in a cooperative way to fight the racial injustice and the racial inequality. Because of their efforts, many of the African Americans got registered for voting in Mississippi. In 1963, there was a massive protest and demonstration against the racial segregation and the discrimination in Birmingham under the leadership of Martin Luther King, Jr and the authorities there were forced to use force to quell it. This 1963, the Civil Rights Movement resulted into a major march on the streets of Washington under the control of activists like Randolph and Bayard Rustin. Martin Luther King showed his exceptional leadership by addressing a mass gathering of the Civil Rights Activists at Lincoln Memorial and that became so effective that the Government was convinced to pass Civil Rights Act in 1964. In his "I have a dream speech, Martin Luther king said:

"Even though we face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream. I have a dream that one day this nation will rise up and live out the true meaning of its creed, "We hold this truth to be self- evident, that all men are created equal."

(Quoted in Wright, 2006).

Owing to the passage of the Civil Rights Act, all kinds of discrimination against the African Americans got prohibited and also discrimination practiced in the case of voting was also strictly prohibited. Local agencies were made to stop discrimination against the African Americans and the Attorney General was also given instruction to stop federal funds to any such agencies which were practicing discrimination on the basis of race.

In 1964, the Government brought twenty-fourth amendment to the Constitution by which the poll taxes being imposed on the African Americans were abolished. The main motive behind bringing this amendment was to ensure the enhancement of the number of African American voters in the voting list. In the south, there were incidents of discrimination in voting towards the African Americans under the pretext of difficulties involved in it in 1965. Forces were used against the demonstrators in Selma and also many of them were imprisoned. To protest against this use of force against the peaceful demonstrator, Martin Luther King and the John Lewis led a massive march from Selma to Montgomery. Forced by this massive protest, the Congress passed the Voting Right Act in 1965 by which all kinds of discrimination in voting was abolished and any qualifying criteria involved in the voting procedure were completely eradicated.

#### **4.2 The impact of the Civil Rights Movement-**

The voter registration drive for the African Americans which began in 1960s helped to a great extent in the improvement of their Condition. In the beginning of 1960, only around 28 percent of the African Americans were registered in the voter list and only 100 African Americans were got elected as officials. By the time of 1969, the number of African

Americans being registered increased significantly. The condition of African Americans started improving after these developments. Many of the African Americans reached the ladder of middle class and also some reached to the level of upper middle class. An African American named Thurgood Marched was named in the US Supreme Court in 1967. It was a great achievement for the African American community. Another achievement was the holding of a post of Senator by an African American named Edward W. Brooke who remained there in office from 1967 till the period beyond 1970.

Civil Rights movement had major impact on the whole of USA, particularly the southern states of America. The Supreme Court decision had influenced the Civil Rights Movement to a great extent. This movement also changed the then existing relation between the races like African Americans and the whites.

Charles V. Hamilton recognized the contribution of the US Supreme Court in the Civil Rights Movement. He was of the opinion that the verdict of the US Supreme Court with regard to the racial segregation and other racial discrimination led the Civil Rights Movement to follow its path and achieved success in the elimination of the “de jure” segregation. The US Supreme Court played a crucial role in the abolition of the de jure segregation. (Charles W. Eagle, 1986).

The Civil Rights Movement was launched with the prominent motive towards eliminating job discrimination, promoting educational opportunities for the African Americans, extending voting rights and also for the implementation of desegregation policy in the public and the commercial facilities. Initial target of the Civil Rights Movement were the southern states of America as there was de jure segregation in practice and directly supported by the State governments being completely against the norms of democratic values. The motive of the Civil Rights Movement

was to bring changes in the existing segregation of the public facilities and the removal of the racial discrimination being faced by the African Americans. (Roof, 1979).

### **4.3 Government responses-**

Following the verdicts of the US Supreme Court in many of the racial related cases and the outbreak of the Civil Rights Movement right in 1950s, the Government was keen to make changes in the existing laws and making new such laws which could prohibit the discrimination and the inequality being practiced in the US. There were many crucial steps which the US Government took at that time and which proved to be a turning point in the history of the African Americans. Acts like Civil Rights Act (1964), Voting Right Act (1965) and the Housing Acts were passed in this period of 1950 to 1970s. These acts boosted the efforts towards the establishment of racial equality and racial justice towards the African Americans. Due to the eruption of the Movement, riots and violence occurred at many places. In one incident in 1961 when a student got admitted in University of Mississippi, violence erupted suddenly. At that moment, President Kennedy moved the federal troops to protect the African students. Again in another incident which happened in 1965, President Johnson moved the federal troops to protect the African American people marching from Selma to Montgomery. This way, the executive took the Civil Rights Movement with praiseworthy initiatives. (James Fearon and David Laitin).

It was President Lyndon Johnson who initiated the programme of “Great Society”. The main purpose of the Great Society was to eliminate the racial injustice being faced by the African Americans and another was to eradicate the menace of poverty. The various actions taken to eliminate the racial injustice can be discussed as follows-

#### **4.4 Civil Rights Act (1964)-**

Civil Rights Act was a major step towards the elimination of racial injustice being faced by the African Americans. It was considered as the most crucial legislation to be passed by the congress in twentieth century. This law after being passed in the congress invalidated the racial segregation in the southern states of America where states law was made to implement the racial segregation. (Loevy, 1997). It was passed in 1964. Before the passage of this act, there was segregation on the basis of race in every hotel, motels, parks, restaurants, schools and the theatres. Protests were going on against such discriminatory and unjust practices. President John F. Kennedy once said on June 11, 1963:

“We are confronted primarily with a moral issue. It is as old as the Scriptures and it is as clear as the American Constitution. The heart of the question is whether all Americans are afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated.”

(Quoted in Wright, 2006).

It was Kennedy who passed a strong Civil Rights Bill in order to ensure the racial justice and equality for the African Americans. But before the Civil Rights Bill could be passed in Congress and become a law, he was assassinated. After the tragic incident, President Lyndon B. Johnson who succeeded President Kennedy worked hard to get the Civil Rights Act passed in the Congress. President Johnson called for the passage of the Civil Rights Bill as an honor to the deceased Kennedy for the first time while addressing the Congress and the people on November 27, 1963. He declared that the ideas and the ideals which were given by the Kennedy must be put to action so that the racial equality could be brought in the American society. While the President Kennedy was too determined in his

principle, President Johnson was too clear in the parliamentary procedure and he used his talent in this field by supporting the passage of the Bill. The House of Representative passed the Civil Rights Bill on February 10, 1964 b290-130 votes. But the real hurdle was to be faced in the Senate which had used the filibuster in order to kill such Civil Rights Bills in the past also. President Johnson made major effort in getting this Bill passed in the Senate. He supported the Civil Rights activists and the other leaders of all religious faiths to put pressure for the passage of the Bill. Finally, the Bill got passed in the Senate on June 2, 1964 and after that President Johnson signed it to finally become a law. There were some worry among the member of the Congress that whether the new Civil Rights legislation is under the constitutional norms because in the past the US Supreme Court had invalidated such law by giving the contention that Congress does not have the power to make such laws. (Capozzi, 2006).

The Civil Rights Act passed in 1965<sup>4</sup> was an opening door for the expansion of the Civil Rights and became an example for the further legislation towards the promotion of Civil Rights. It was a complete piece of legislation passed by the congress and had a positive impact on the task of school desegregation in the south. (Wilkinson III, 1976). There were few crucial provisions added to the Civil Rights Act of 1965 which could be mentioned as follows-

- Title VII prohibits discrimination in employment on the basis of race, color, religion, national origin, or sex. In addition, it is unlawful to discriminate on the basis of pregnancy, childbirth, or related medical conditions. Title VII applies to employers with 15 or more employees, including the federal government and state and local governments including the federal government and state and local governments. Individuals who believe they are the victims of employment discrimination must file a complaint with the Equal

Employment Opportunity Commission (EEOC), which is responsible for enforcing individual Title VII claims against private employers. The Department of Justice (DOJ) enforces Title VII against state and local governments, but may do so only after the EEOC has conducted an initial investigation.

- Title IV prohibits discrimination in federally funded programs or activities on the basis of race, color, or national origin. Individuals who believe they are victims of discrimination may file a complaint with the federal agency that provides funds to a recipient, or they may file a lawsuit in federal court. Each federal agency is responsible for enforcing Title VI compliance with respect to its funding recipients, but DOJ plays a role in coordinating federal Title VI activities.
- Title II prohibits discrimination on the basis of race, color, religion, or national origin in public accommodations. Public accommodations, which are defined as establishments that serve the public and that have a connection to interstate commerce, include hotels and motels, restaurants and bars, and entertainment venues such as movie theaters or sports arenas. DOJ enforces Title II. ( Congressional Research Service, 2005)

The passage of the Civil Rights Act of 1964 by the Congress expedited the implementation of the desegregation in the schools and the other public places. It made the provision by which federal funds could be stopped for such institutions which were practicing racial discrimination. For implementing the provisions of the Civil Rights Act, funds could be blocked by the Department of health, education, and welfare to the schools which were delaying or ignoring the desegregation policy. Schools were pressed to implement the desegregation policy and the school officials were quite cautious about it. By this act, Department of justice could file suits against the continuance of segregation in case the



local residents happened to be incapable in doing so. This provision of the Civil Rights Act definitely enhanced the possibilities of litigation against the schools and the other institutions which against the desegregation. The US Supreme Court strengthened these provisions and the Civil Rights Act by taking concrete decision with regard to it in 1968 and 1969. (Baum, 2001).

#### **4.5 Voting Rights Act (1965)-**

The Civil Rights activities got momentum with the disapproval of an African American lady named Rosa Park for not vacating her seat for a white passenger in a bus in Montgomery. That very incident led to the boycott of the segregated buses on a mass level and with that spread the massive civil right protest all over the south. Martin Luther King was chosen as the leader of the movement and also under his leadership, Montgomery Improvement Association (MIA) moved forward. Martin Luther King followed the principle of non violence propounded by Mahatma Gandhi in his movement against the racial injustice and discrimination. MIA got success in its efforts in 1956 when the Supreme Court's judgment declared the desegregation in the buses as unconstitutional. Martin Luther King established the SCLC in order to move ahead in terms of the fight against the racial injustice in a institutionalized fashion which would help greatly in this regard. It was with the effort and the leadership quality of the Martin Luther King Jr. and his non violent method against the racial discrimination that led the Government of John F. Kennedy to introduce a legislation to pass the Civil Rights Act in 1964. The long protest and demonstration finally resulted into the march of lacks of people in Washington on August 28, 1963. Martin Luther King used this opportunity to give his famous speech

“I have a dream” to show the linkages between the African American’s desire for the civil rights with the traditional American values. The mass protest and the demonstration by the public in Montgomery and Selma in the later period led to the introduction of Voting Right Act in 1965 by the President Lyndon B. Johnson. (Charles W. Eagle, 1986).

Voting Rights Act was passed in 1965 just after the Civil Rights Act passed in 1964. The purpose of the Voting Right Act was to stop the disenfranchisement of the African Americans (blacks) voters in the southern states of America and also to stop the practices of discrimination in voting on the basis of race, color or other such factors. This act was also meant to stop redistricting or the registration of voters which was discriminatory in nature and to permit the monitoring of the elections by federal monitoring observers. Individuals could also sue in the Court against the violation of this act apart from the Department of Justice which is meant to enforce the Voting Right Act. (Feder in Capozzi, 2006).

Some of the provisions given in the Voting Right Act can be mentioned as follows-

- Prohibit the enactment of any election law to deny or abridge voting right on account of race or color.
- Suspend all literacy tests in states and counties that used them and where less than 50% of adults had voted in 1964.
- Prohibit the enforcement of new voting rules or practices until federal reviewers determine if their use would continue voting discrimination.
- Assign federal examiners to list qualified applicants to vote and to serve as poll watchers.
- Authorize the Attorney General to institute civil actions to seek enforcement of the act.

- Prohibits any person acting under color of law or otherwise from intimidating or denying any eligible person from voting. (CRS, 2004).

The Civil Rights Act was passed by the US Congress in 1965 to stop the widespread practice of excluding the African American from exercising their voting rights in many of the southern states of America. This act was passed to not to allow the state governments to practice any such thing like the literacy test to devoid the African Americans of voting. There were amendments also took place in this act in the later period. The most immediate one after the passage of this act was the amendment made in 1970. Just after the passage of this act, nearly one million African Americans registered for voting. Later, a Commission on Civil Rights maintained through its report that different tactics were being used to exclude the African American from using their voting rights. (CRS, 2008)

These included-

- Switching to at-large elections when black voting strength is concentrated in particular districts,
- Extending the terms of incumbent white officials,
- Making certain offices appointive rather than elective,
- Changing the dates of elections suddenly,
- Changing the qualifications of candidates,
- Increasing the costs of a filing fee for election, and
- Gerrymandering to dilute the nonwhite vote.

(CRS, 2008)

After much debate and discussion in the Congress, amendments were made in the Voting Right Act of 1965 in order to ensure the equal and unjust voting rights for the African Americans. President Richard Nixon signed the Voting Right Amendment of 1970 into law on June 22, 1970.

The new provisions made in the amended Voting Right law can be mentioned as follows-

- Extended the expiration date for five more years to August 1975,
  - Extended from five to 10 years the period of time for which an area covered by the act must abstain from the use of any literacy test or similar device to discriminate against voters because of race or color,
  - Amended Section 4 of the act to make the “trigger formula” cover three districts in Alaska; Apache County, Arizona; Imperial County, California; Elmore County, Idaho; Bronx, Kings (Brooklyn) and New York (Manhattan) counties, New York; and Wheeler County, Oregon.
  - Suspended the use of literacy tests in all states until August 6, 1975,
  - Provided that any person could vote in a Presidential election if he had established residency 30 days prior to a Presidential election, and
  - Lowered the voting age to 18 years.
- (CRS, 2008)

These steps taken by the US Congress worked to a great extent in establishing the social justice for the African American. But it was not as simple as it appears to be, rather opposition were also there towards such legislation. The Supreme Court’s effort and the Government’s resolution towards the promotion and protection of the rights of African American led to such changes which paved the way for further improvement in the life of the African Americans.

## **4.6 Fair Housing Act (1968)-**

Fair Housing Act was passed in 1968 in order to prohibit the discrimination based on race, color, religion, national origin, sex, disability, or familial status selling or renting of the housing property. This act was enacted both for the public and the private housing. The responsibility of its enforcement lies with the Department of Housing and Urban Development and also individual could also suit in the federal Court if they find any discrimination in the housing on the basis of race. (CRS, 2005).

The passage of the Civil Rights Act of 1964 and the Voting Right Act of 1965 brought out real changes in the condition of the African Americans (blacks). Because of the passage of the Voting Right Act, African Americans registered for voting in record numbers. Also, African American children began to join the white schools which were earlier meant for whites only. The excess to the public facilities were also made opened for the African Americans. Apart from these changes, one more important change was that the African Americans started getting handsome jobs with handsome salaries. These changes were definitely visible and transformative. (Roof, 1979)

## **4.7 Action of the US Supreme Court and the Executive Responses towards the Civil Rights Movement-**

The US Supreme Court had a different perspective towards the race relation and the African Americans before 1950 and that could be clarified through its judgments in various cases related to race relation coming to it. Especially when the Earl Warren became the Chief Justice of the United States, the US Supreme Court made historic judgment with

regard to the race relation in the US. The period since 1950 to 1970 also witnessed the outbreak of Civil Rights Movement in the United States against the racial inequality and the racial segregation of the African Americans and Supreme Court in some way or the other helped this movement. To provide protection to the activists of the Civil Rights Movement from any action by the officials of the southern states, the US Supreme Court widened the freedom of expression and association. Also for addressing the continuous problem of racial discrimination practiced by the police and the criminal Courts, the US Supreme Court increased the due process rights of the activists of Civil Rights Movement. Further, the US Supreme Court increased the due process rights of the receivers of welfare policies of the state governments for addressing the problem of racial discrimination being practiced in the implementation of the welfare policies started by the State Government. It was the major decision of the US Supreme Court in the case of *Brown v. Board of Education* which led to the first organized step was taken by the Civil Right Movement. The NACCP made effort to enforce the decision of the US Supreme Court in *Brown* case for the first time in a systematic and organized way. The boycott of the Montgomery bus after the Supreme Court's decision in the *Brown II* was organized African Americans which were considered as the first such major action of the Civil Rights Movement. The Civil Rights Movement and the opposition to it came to zenith by 1963. In this period, SNCC (Southern Christian Leadership Conference) led by Martin Luther King, Jr. launched movement in Birmingham and the police used force to quell it. In such a situation, President Roosevelt recognized well the requirement of the Civil Rights Equality and the end to racial discrimination and for this he was required to get the passage of the Civil Rights Statute. It was the demand of democratic rights by the Civil Rights activists and the intense opposition towards them which created sympathy for them among many of people of northern states of America. Further, US Congress passed the Civil Rights Act of 1964 because of the pressure

exerted by the President Lyndon Johnson and the common people for transformation in the American society. Due to the passage of the Civil Rights Act, discrimination of all kind based on race or sex or color or region was made illegal and unconstitutional. The African American citizens were also denied the right to vote through various means like literacy test and the poll test. Against such discrimination in voting rights, Martin Luther King Jr. led a march from Selma, Alabama, to Montgomery. To meet the demands of the African Americans for racial equality in voting rights, President Lyndon Johnson asked for the passage of voting right act in 1965. The making and the enforcement of these acts was really the result of Supreme Court's effort, Presidents initiative and the readiness of the Congress. The passage of these acts also showed the support of all the three organs of the Government towards Civil Rights Movement. The US Supreme Court assisted the Civil Rights Movement by giving judgment in cases related to African Americans in their favor. (Epp, 2005).

There had been steps taken by the Presidents which affected the life of the African Americans the most. President John F. Kennedy passed a executive order 10925 on March 06, 1961 to make the government contractor to take affirmative action and to treat the employee without considering about their race, color, creed or national origin. The Executive order 10925 says-

“The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other form of compensation; and selection of training, including apprenticeship”

(Quoted in King, 2010).

This executive order passed by President Kennedy helped in some way to eliminate racial discrimination meted out by the African Americans in employment to some extent.

The Supreme Court through its verdicts in various cases related to the African Americans supported the cause of the Civil Rights Movement and also provided protection to the Civil Rights Activist by expanding the right to freedom of speech and expression. The federal government on its part gave executive orders for promoting justice to the African Americans and also made the way for the legislation of certain acts which certainly enhanced the racial equality and the racial justice towards the African Americans. This way all the organs of the Government helped in the promotion of social justice towards the African Americans.



# CHAPTER- 5

---

## CHAPTER – 5

### Concluding Observations

The US Supreme Court has a major role to play in the democratic structure of the US Constitution. It has made major effects on the social, political and the economic lives of American people through its judgments from time to time. An examination of the judgments taken by the US Supreme Court reveals how it has moulded different aspects of American life. The US Supreme Court has evolved with the changing circumstances and requirements for the oldest democracy of the world. There have been many occasions when the US Constitution remained silent or ambiguous on major issues. In such scenarios, it has always been the Supreme Court which interpreted and took decisions on such issues taking into account the moral, legal and the humanitarian aspects of the cases. It is because of this reason people talk of judicial activism. In the life of American people, lots of changes have occurred because of the rulings of the US Supreme Court. One bright example is Supreme Court decisions related to race relations.

Before 1950, the US Supreme Court gave such judgments which were racist in nature and were completely against African Americans. In Plessy v. Ferguson case, the US Supreme Court declared the doctrine of “separate but equal” as constitutional and validated the state laws supporting and encouraging segregation on the basis of race. There were separate facilities for African Americans and the whites. There were separate parks, hotels, motels, drinking water facilities, transport facilities, schools and colleges. Also, there was huge difference in the standard of the facilities provided to African Americans from that of the whites. The facilities provided to the African Americans used to be

inferior and neglected in comparison to that of the whites. Racism had deeply rooted in the American society and often lynching of African Americans by the racially motivated whites used to take place. The Plessy decision was the most racist decision which the US Supreme Court had taken till then. Following this judgment, segregation on racial line took a momentum in the Southern states of America. The stand of the US Supreme Court took a turn in the case of Sweatt v. Painter which came in 1950. In this case, an African American student sued in the Court against the Texas State University on the ground that there were deep inequality between the kind of education provided to the African American students and the white students in the law schools. The Texas government had established a law school for the African Americans in a hurry in order to avoid taking Sweatt in the white law school as a student. Since the new law school was not at all fine in comparison to the white law school in infrastructure as well as in other facilities, Sweatt sued against it. The US Supreme Court gave the judgment in the favor of Sweatt citing the fact that there was grave inequality in the condition and the facilities of the white law school and the African American law school. The Court found these two schools to be separate but not equal. The Court directed the State University to take Sweatt in to its institution as a student as the court found this as the only way out to remedy this problem. This was a big turn in the position of the US Supreme Court as in this case US Supreme Court took a just position without taking any racial biasness.

Another case came in 1950 which was also related to the racial biasness. It was the case of McLaurin v. Oklahoma Board of Regents of Higher Education. This case was also quite important with regard to the racial equality and racial justice in the United States of America. An African American student named George McLaurin got admission in the doctoral program in the University of Oklahoma in 1949. However, there were some restriction for him with regard to his presence and his behavior

in the institution. He was required to sit separately in the class and also take his food at a different time table from the rest of the white students. Feeling humiliated with such instructions and guidelines in the institute and also its adverse impact on his academic performance, McLaurin sued against it in the Court in order to stop such things in future. Finally this case reached the US Supreme Court. Observing the adverse effect of such practices on the academic record of McLaurin, Supreme Court ordered the closer of such practices and permission was given to McLaurin to attend classes with the students of other races together and also take his food with them without any discriminatory approach. This case was also quite supportive to the cause of racial justice and racial equality in America. It was the second such instance when the US Supreme Court took a racially just decision towards African Americans. In another case which is considered a landmark decision in the history of the US Supreme Court, the US Supreme Court took a decision which completely overturned the doctrine of "separate but equal". This was the case of Brown v. Board of education which came to the Court in 1954. The Court was of the opinion that a sense of inferiority affects the motivation of a child to learn. Segregation backed by the state law, therefore, has a tendency to spoil the educational and mental development of the African American student. In this case, An eight year old child whose name was Linda Brown had to travel a long distance to attend her class while her white friends had not to do so because of their classes being nearby. The school system in Topeka was segregated on the basis of race and this was legal under the separate but equal doctrine drawn out of the interpretation of the fourteenth amendment in the case of Plessy v. Ferguson. At the end being disturbed with this fact, Lind's parents sued in the federal district Court as the facilities for the African American students were not equal to that of the white students. The lower Court gave the judgment in the favor of the school system and agreed with it that if the facilities were equal the African American child was being treated equally with those of the white

students as interpreted by the fourteenth amendment. Taking into account the facts of the case and the history of the Court's thinking on the issue of "separate but equal doctrine", the US Supreme Court overturned its decision made in the case of Plessy v. Ferguson case. The then chief Justice of the US Supreme Court, Earl Warren, stressed the importance of education and put forth his views on how the education turn the life a child and help him become a good citizen. The Supreme Court under Warren delivered its judgment on the basis of dehumanizing effect of segregation in the public education system. This was a landmark decision and put major impact on the life of African Americans.

The judgment in the case of Brown v. Board of Education was actually the culmination of the Court's decisions in the case of Sweatt v. Painter and the McLaurin v. Oklahoma Board of Regents of Higher Education. This judgment of the US Supreme Court led to the changes in the view point of the legislature and the executive organ of the government in US. The congress in America passed major acts like civil right act, voting right act and the housing act in the period between 1950 and 1970. The civil right act which was meant to invalidate the racial segregation in the southern states of America where states law was made to implement the racial segregation. Further the enactment of the voting right act by the congress led to the removal of disfranchisement against the African Americans. The housing act was meant to eliminate the discrimination against the African Americans in the sell and purchase of the property. These acts passed by the Congress were the result of stream of changes brought out by the landmark decisions taken by the US Supreme Court.

The period of 1950 to 1970 was crucial from the point of view of the outbreak of Civil Rights Movement and the increase in the activeness of organizations like NCCP, SNCC, CORE and SCLC. These organizations led the Civil Rights Movement and endeavored strongly to

raise the issue of Jim Crow law and other kinds of racial discrimination faced by the African Americans. Martin Luther King, the with the association of other fellow Americans strongly addressed the issue of injustices faced by the African Americans and also the discrimination faced by them which were against the principle of “equal justice under law” as given in the constitution. The Civil Right Movement was launched with the prominent motive towards eliminating job discrimination, promoting educational opportunities for the African Americans, extending voting rights and also for the implementation of desegregation policy in the public and the commercial facilities. Initial target of the Civil Right Movement were the southern states of America as there was de jure segregation in practice and directly supported by the State governments being completely against the norms of democratic values. The motive of the Civil Right Movement was to bring changes in the existing segregation of the public facilities and the removal of the racial discrimination being faced by the African Americans.

The US Supreme Court helped the Civil Rights Movement to fight effectively the racial segregation and the racial discrimination faced by the African Americans by widening the freedom of speech and expression. This step of the US Supreme Court prohibited the uncalled for arrest of the African American leaders who were actively taking any case related to the racial discrimination and the equality to the Court and also protesting such discrimination on the streets. The government of the United States also responded positively by taking various steps which were directed towards the elimination of the racial discrimination and the racial inequality being faced by the African Americans. These acts boosted the efforts towards the establishment of racial equality and racial justice towards the African Americans. Due to the eruption of the Movement, riots and violence occurred at many places. In one incident in 1961 when a student got admitted in University of

Mississippi, violence erupted suddenly. At that moment, President Kennedy moved the federal troops to protect the African American students. Again in another incident which happened in 1965, President Johnson moved the federal troops to protect the African American people marching from Selma to Montgomery. This way, the government took the Civil Right Movement with praiseworthy initiatives. It was President Lyndon Johnson who initiated the programme of “Great Society”. The main purpose of the Great Society was to eliminate the racial injustice being faced by the African Americans and another was to eradicate the menace of poverty.

The judgment of the US Supreme Court, various acts passed by the congress and executive orders passed between the period of 1950 to 1970 clearly explains that all the three organs of the governments in US took steps at their level to tackle the problem of racial discrimination and racial inequality being faced by African Americans. The role of the US Supreme Court in the case of providing social justice to African Americans is quite crucial as it was the Court which motivated and changed the perception of the racial inferiority felt by African Americans by its judgment in various race related cases.

John Rawls, a contemporary American political philosopher, has given two principles of justice through which he tries to assess the justice of actual social institutions like political government. He calls his theory of justice as “justice as fairness” in which he argues that fairness occurs when a society insures that each citizen is treated equally in the eyes of law and is given equal opportunity to succeed in his own socially chosen life. The first principle propounded by Rawls guarantees the right of each person to have the most extensive basic liberty compatible with the liberty of others. The second principle insists on the social and economic positions in such a way so that they can be advantageous to everyone and also open to all. The judgment of the US Supreme Court in the case of

Brown v. Board of Education, Sweatt v. Painter, McLaurin v. Oklahoma Board of Regents of Higher Education and the decisions in other such cases reveals that the US Supreme Court established the concept of 'Justice as fairness' which implies that African Americans were relieved from the racial discrimination which they were facing since a long period of time and were given equal treatment and equal opportunities by giving them freedom to take admission in the desegregated schools, colleges and also freedom to use the public facilities without any racial restrictions. In a way, the US Supreme Court tried to establish justice for African Americans by giving fair judgment and also the judgment of the Court led the other institutions like the Congress and the executive to take steps in the direction towards the establishment of social justice for the African Americans.

This research was initiated and taken forward on the backbone of the following hypotheses-

- 1) Supreme Court's decisions on race-related discrimination did not alter the social and economic conditions of the African Americans.
- 2) Civil Rights Movement and the legislative measures to promote social justice among the African- Americans drew inspiration from Supreme Court's rulings.

On the basis of my research, the both hypothesis stand validated, but with certain nuances which shed light on the complex process of law making, implementation and its implications. One of the grim realities of American life is the lack of proper implementation of constitutional provisions, congressional legislations and the Supreme Court's decisions on highly sensitive and moral issues of racial discrimination. The Supreme Court during the early period of American history was instrumental in supporting socio-economic discrimination against the African Americans, particularly the White Anglo Saxon community in the



US. The Court took a U- turn since 1950s and began to champion the cause of social justice and overall upliftment of the African Americans. The American executive has considerable record of implementing Court decisions and forming legislations. But the real change has to come from the people. After the Executive orders, the onus of the implementation lies in the domain of the public. The Supreme court orders for disaggregation of schools came in 1954 and 1955, but the actual implementation was delayed till the 1960s. It was the on the orders of the Executive and the legislation of various Acts like, Civil Rights Act of 1964, Voting Right Act of 1965 and the Housing Act of 1968 that the actual implementation started.

## REFERENCES

( \* indicates primary sources )

Adams, J. Q. (1993), "Through the Looking Glass and What the Supreme Court Finds There: The Political Setting of *United States v. Fordice*", *Mississippi Law Journal*, 62

Baum, Lawrence (2001), *The Supreme Court*, Washington D.C.: C.Q Press

Blauner, Bob (1989), *Black lives, White lives: Three decades of race relation in America*, California: University of California Press.

Brooks, Roy L. (1990), *Rething the American race problem*, California: University of California Press.

Brown, Lynn T. (2004), *Brown v. Board of Education and School Desegregation: An Analysis of Selected Litigation*, Ph. D. Thesis, Blacksburg: Virginia Polytechnic Institute and State University.

*Brown v. Board of Education*, 347 U.S. 483 (1954).

Clarín, Thomas (1998), *Sweatt v. Painter*, in David Bradely and Shelly Fisher, New York: M. E Sharpe, Inc.

Cohodas, N. (1997), *The Band Played Dixie*, The Free Press: New York

\*Congressional Research Service, Library of Congress 2005, Federal Civil Rights Statutes: A Primer

\*Congressional Research Service, Library of Congress 2004, 'The Voting Right Act of 1965, As Amended: Its History and Current Issues'.

\*Congressional Research Service, Library of Congress 2009, 'Hate Crime Legislation.'

\*Congressional Research Service, Library of Congress 2008, 'The Voting Right Act of 1965, As Amended: Its History and Current Issues'.

Capozzi, Irene Y.(2006), "Backgrounder on the Civil Right Act", in Irene Y. Capozzi(eds.) *The Civil Right Act: Background, Statutes and Primer*, New York: Nova Science Publishers, Inc.

Carbado, Devon W. (2005), "Racial Naturalization", *American Quarterly*, 57(3): 633-658

Epp, Charles R.(2005), "Courts and the Right Revolution", in Kermit L. Hall and Kevin T. McGuire (eds.) ,*The Judicial Branch*, New York: Oxford University Press.

Feagin, Joe R. (2000), *Racist America: Roots, Current Realities, and future Reperations*, New York: Routledge.

Friedman, L. (2004), *Brown v. Board The Landmark Oral Arguments Before the Supreme Court*, New York: The New Press.

Freeman, J. A. and Teddlie, C. (2002), *Twentieth-Century Desegregation in U.S. Higher Education in The Racial Crisis in American Higher Education*. Altbach, Philip G., Lomotey, Kofi, and Smith, William A.. Albany, New York: State University of New York Press

History of Brown v. Board of Education available at <http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks/HistoryofBrownVBoardofEducation.aspx>

Hebel, S. (2004, October 19), Supreme Court Endorses Plan to Settle Mississippi's College-Desegregation Case. *The Chronicle of Higher Education*

Hunter, Richard C. (2004), "The Administration of Court – Ordered School Desegregation in Urban School Districts: The Law and Experience", *The Journal of Negro Education*, 73(3): 218-229.

Klarman, Michael J.(2004), *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*, New York: Oxford University Press.

King, Kendra A.(2010), *African American Politics*, UK: Polity Press

Loevy, Robert D.(1997), "Introduction: The Background and the Setting of the Setting of the Civil Right Act of 1965" , Robert D in Lovey (eds.) *The Civil Right Act of 1964: The Passage of the Law That Ended Racial Segregation*, Albany: State University of New York Press.

Lee, Jennifer et al. ( 2003), "Immigration and the Black- White Color Line in the United States", *The Review of Black Political Economy*, 31(1): 43-76

Martin Jr., Waldo E.(1998), *Brown v. Board of Education: A Brief History with Documents*, Boston: Bedford/ St. Martin's

Mira Tanna, Jones v. Mayor Revisited ,  
<http://www.clevelandstatelawreview.org/57issue2/Tanna.pdf>

Mikula, M. F., & Mabunda, L. M. (1999), *Great American Court Cases, Volume III Equal Protection and Family Law*, The Gale Group, Farmington Hills, MI.

Motely, Constance Baker (1998), *Equal Justice....under law*, New York: Farrar, Straus and Giroux.

Nickel, James W.(1997), "The Liberty Dimension of Historic and Contemporary Segregation", *Law and Philosophy*, 16(3): 259-277

Perea, Juan F. (1997), "The Black/White Binary Paradigm of Race: "The Normal Science" of American Racial Thought", *California Law Review*, 85(3): 1213-1258.

Perry, Michael J. (199), *We the People: The Fourteenth Amendment and the Supreme Court*, New York: Oxford University Press.

Portales, Marco (2003), "Can the Supreme Court Constitutionally Uphold the Hopwood Opinion? Race, Color- Blindness and Public Opinion before Bakke", *Callaloo*, 26(1): 26-46

Pitts, David (1999), "Brown v. Board of Education: The Supreme Court Decision that Changed a Nation", *Issues of Democracy*, 4(2): 38-46

Roof, Wade Clark (1979), "Race and Residence: The Shifting Basis of American Race Relations", *Annals of the American Academy of Political and Social Science*, 441:1- 12

Stack Jr., Sam F. (2008), "Implementing Brown v. Board of Education in West Virginia: The Southern school News Reports", *West Virginia History: A journal of Regional Studies*, 2(1): 59-81

Southern Education Foundation, (1974). *Ending Discrimination in Higher Education*.

Sunstein, Cass R. (2005), "Judges and Democracy: The Changing Role of the United States Supreme Court", in Kermit L. Hall and Kevin T. McGuire (eds.) *the Judicial Branch*, New York: Oxford University Press. P.48

Tachak, J. (1998), *Brown v. Board of Education*, San Diego, CA: Lucent Books.

Trent, W. T. (1991), "Student Affirmative Action in Higher Education: Addressing Underrepresentation", in Altback, Philip G. Lomotey, Kofi (eds.) *The Racial Crisis in American Higher Education*, New York: State University of New York Press.

Wallenfeldt, Jeff (2011), "The Civil Rights Movement and Freedom Struggle", in Jeff Wallenfeldt (eds.) *The Black Experience in America: From Civil Rights to the Present*, New York: Britannica Educational Publishing in association with Rosen Educational Services, LLC

Wilkinson III, J. Harvie(1979), *From Brown to Bakke- The Supreme Court and School Integration: 1954-1978*, New York: Oxford University Press.

Wilson, Bobby M. (2005), "Race in Commodity Exchange and Consumption: Separate but Equal", *Annals of the Association of American Geographers*, 95(3): 587-606

Wright, Susan (2006), *The Civil Right Acts of 1964: Landmark Antidiscrimination Legislation*, New York: The Rosen Publishing Group, Inc.

United States Constitution. Article XIV.

Whitman, M. (1992), *Removing the Badge of Slavery: The Record of Brown v. Board of Education*, Princeton, NJ: Markus Wiener Publishing

