HOW JUDICIARY CAN ENDORSE OR ELIMINATE INJUSTICE AND DISCRIMINATION: A CASE STUDY OF THE ROLE OF JUDICIARY IN THE BLACK CIVIL RIGHTS MOVEMENT IN THE UNITED STATES

Javed Iqbal*, Salman Bangash**

Introduction

The African Americans or black Americans, historically named as Negroes or Colored people, remained deprived of their basic Civil Rights and had to face the worst kind of segregation and racial discrimination in the United States till the mid twentieth century. Although they were emancipated from slavery during the American Civil War (1863), it was very recently, in the 1950s and 60s, that they got their rights as citizens of the United States of America.

In this struggle for equal civil rights, the U.S. Judiciary played a very important role, which can be categorized into two distinct and different periods. Initially, the Judiciary dominated by the supporters of White Supremacy was unsympathetic to the struggle against segregation and racial discrimination. During this period, it gave some very important decisions in cases like Dred Scott Vs. Sandford (1857) and Plessy Vs. Ferguson (1896), which strengthened the position of those who were opposed to giving equal rights to the Black Americans. By the start of the twentieth century, however, a positive change was visible in the attitude of the Judiciary regarding the Civil Rights. The positive role of the American Judiciary commences in 1915 with the Court’s decision in Guinn v. United States, declaring an Oklahoma law as unconstitutional which had denied the right to vote to some citizens. It was followed by a series of landmark decisions by the Federal Judiciary and the Supreme Court which finally dismantled the race barriers in United States and

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* Asst. Prof. Department of History, University of Peshawar
** Lecturer, Department of History, University of Peshawar
ended all discriminations based on race and color. This paper will emphasize on the role played by the US Judiciary in the Black Civil Rights Movement to show that Judiciary in every society and state can play a decisive role in ending injustice and ensuring the rule of law.

Roots of the Problem: The Beginning of Slavery

The ancestors of the African Americans or Negroes, as they were referred to by the racist whites out of contempt, were brought to America as slaves by slave traders mainly from the West Coast of Africa and were sold to the owners of large plantations in Spanish colonies during the Sixteenth Century. The first group of Africans was brought to the North American mainland in 1619 as indentured servants or slaves and with the success of tobacco plantations, more and more of these African slaves were brought to Virginia and Maryland and sold to the big planters. In this way, black slaves became an important feature of the southern agrarian economy in the United States.

During the War of Independence, the black slaves fought against the British alongside their white masters and thus secured their share in the liberation of the former British colonies that later became the United States of America. But even after independence, there was no change in the position of the black slaves. However, in the beginning of the nineteenth century, some sections of American population, particularly the people in the Northern states, had started to raise their voices against the inhuman institution of slavery. The supporters and opponents of slavery developed a serious conflict which led to the division of the American population into two opposite and hostile sections: the North and the South. This division of the American people and their differences on the issue of slavery were mainly responsible for the outbreak of the American Civil War in 1861 between the two sections of states mentioned above in which the North ultimately emerged victorious. During this war, the Emancipation Proclamation was issued by President Abraham Lincoln on January 1, 1863, emancipating the slaves in those states which had seceded from the United States of America. This proclamation, however, had no immediate effect as it

applied only to the “enemy territory”, the southern states in revolt against the Union but it was the beginning of a new moral crusade and it aroused new spirit among the abolitionists in the North and the enslaved people themselves.3
When the war ended in 1865 in favor of the North, the Congress passed the 13th and 14th Amendments to the Constitution of the United States and made them part of the reconstruction process. These amendments completely abolished slavery and gave the Blacks full citizenship of the United States.4

Reconstruction after the Civil War and the End of Slavery

After the Civil War, a major problem that the United States had to face was that of the Reconstruction of the Union and the re-admission of the Southern states to the United States of America. The public opinion in the North was greatly divided on the issue of re-construction. Some were of the view that the South had been punished enough and that the Southern states should be treated leniently but the majority wanted to punish the South for causing the war and large scale destruction. The result was that three different plans were put forward for the re-construction of the South to the Union. One of them, the first one, came from the then President of United States Abraham Lincoln, which pleaded for a lenient treatment of the rebellious southern states.5
However, Lincoln's plan was considered far too generous by those who felt that the South had not been punished enough during the war. Moreover, Lincoln's plan failed to guarantee the rights of the freedmen. No provision was included in his plan regarding the rights of the freedmen, particularly regarding the unconditional right to vote.6
In Johnson's plan for reconstruction, once again the freedmen were denied the right to vote. Naturally the plan was quickly adopted by the southern states but it greatly disappointed the radicals who wanted to punish the south for starting the war. The result was that the Congress intervened and it put forward its own plan.7
One of the most important parts of the Congressional Plan for Reconstruction was the Fourteenth Amendment to the Constitution of

5 Ritchie, 217.
6 Appleby, Brinkley and McPherson, 496.
7 Franklin and Moss, Jr., 206.
the United States which gave full status of citizenship to the newly freed black slaves by giving a new definition of citizenship. Under the Fourteenth Amendment, they were also granted the right to vote and those states which would deny them their right to vote were to be punished by reducing their representation in the Congress.8

**Jim Crow Laws: The Beginning of another Chapter of Slavery**

After the Reconstruction process, the Republican-controlled Federal government intervened to protect the rights of black Americans under the 13th, 14th and 15th Amendments to the Constitution of the United States and the subsequent Civil Rights Acts of 1866 and 1875. While the embittered Southern Whites founded secret organizations like the “Invisible Empire of the South” or the “Ku Klux Klan” at Tennessee in 18669 and resorted to lynching, the Southern Legislatures, overwhelmingly dominated by Democrats, in almost immediate response passed a new set of laws known as the ‘Black Codes’, also known as ‘Jim Crow laws’.10 These laws provided for separate facilities for blacks and whites in health care, transportation, housing and education. The “Jim Crow Laws” is a set of laws that were primarily formulated to discriminate against the black people after the Reconstruction Era, no exact date of its inception can be given. However, majority agree that the first Jim Crow law was adopted in New Orleans during the 1890s, segregating railroad cars in the state. Later on, similar laws were enacted by the legislatures of other states. In Alabama, white female nurses could refuse to attend to ‘negro’ men in both public and private hospitals. They could not be forced to work in those wards or rooms where black men were being treated. In transportation, separate facilities of waiting rooms and ticket windows were set up for whites and non-whites. Seats were assigned to passengers according to their race in separate and segregated compartments of buses and trains designated for the white and black people. The same rules of segregation applied to restaurants where white and colored people could not be served in the same room, unless they

8 Ritchie, 220-221.
10 Jim Crow Laws were enacted in the Southern states and remained in force between 1876 and 1964. These laws imposed restrictions on the access of African-Americans to certain public facilities. Jump Jim Crow was a character in a song written in 1832 and sung by “Daddy” Dan Rice with racist tendencies. Jim Crow was a racist depiction of a poor, uneducated and uncultured rural black man.
were separated by a partition of seven feet or higher and with a separate entrance for each compartment. The Jim Crow laws also banned participation of black Americans in sports along with whites, particularly in any game of pool or billiards. At work places, there were to be arrangements for separate toilet for white and colored workers. Similarly, there were separate public schools for black and white children between the age group of seven and twenty-one.

In Florida, inter-racial marriages were prohibited. A black man and a white woman or a black woman and a white man, not married to each other, could not live in or occupy the same room in the nighttime.

Violators of this law were punished by imprisonment or by fine.\textsuperscript{11}

In Louisiana, a building already occupied in part or as a whole by a white person or white family could not be rented out to a black person or black family and violation of this law was a punishable crime.

In Mississippi, promotion of views about equality of blacks and whites and printing, publishing and circulating of written or typewritten matter that contained arguments or support in favor of social integration and inter-racial marriages was a punishable crime. People convicted of this crime could be punished by fine and imprisonment.

In North Carolina, separate reading places were maintained in the libraries for white and colored people. Even used textbooks donated by individuals or schools were not interchangeable between white and colored schools and could be used only by children of the race that first used these books.

In many states, governments denied the blacks the right to vote on different pretexts and techniques. They included the condition for the blacks to pay the poll tax and to pass a literacy test. The White people, however, were exempted from these conditions by the grandfather clauses which were declared unconstitutional in 1915. In 1900, about 181,000 African-American males were eligible to vote in Alabama but only 3,000 were registered as voters. Apart from the legal bars and restrictions, violence and intimidation was another way to frighten and harass the blacks and to keep them away from the election process. So even those who had the right to vote were intimidated and forced not to vote due to fear of violence, penalties and reprisals. Moreover, polling stations were often frequently and deliberately setup far away from Negro communities to make it difficult for those who would dare to reach there and cast their vote. Those who still had the courage to reach the polling stations to vote found the roads blocked and ferries damaged.

\textsuperscript{11} Punishment by imprisonment was not to exceed 12 months and the maximum limit for punishment by fine was five hundred dollars.
on the day of election. Polling places were often changed without notifying Negro voters or in some cases notifications of changing the polling place were made but a last minute decision was made not to change the polling station.\textsuperscript{12} These were all tactics to disenfranchise the black community.

There were similar ‘Jim Crow laws’ in many other Southern states, restricting the rights of black Americans already conceded to them under the constitutional amendments. At public places like bus terminals and railway stations, there were separate and segregated water coolers and water fountains clearly designated as “colored” and “whites”. Offenders of the laws were tortured, lynched, burnt and killed.

The situation was miserable and overpowering but the black community’s spirit of dignity and urge for attaining equality was not dampened by unofficial cruelties and reprisals and official discrimination. They started a political and legal battle for civil rights in which the Judiciary played a vital role to make the movement a success.

The beginning of desegregation was made by the Congress when it passed two very important pieces of legislation; the Civil Rights Acts of 1866 and 1875. The latter was passed by the Congress on March 1, 1875. It guaranteed equal treatment of all people in matters of public accommodation regardless of race, color or previous condition of servitude (i.e. public transportation, hotels, theaters, etc.).\textsuperscript{13}

**The Unsympathetic Judiciary 1896-1937**

The role of the US Judiciary in the Civil Rights Movement begins with the famous decision in *Dred Scott v. Sandford* in 1857, though at that time the organized movement for civil rights had not yet started. Dred Scott had been taken as a slave into the free territory of Illinois and the northern part of the Louisiana Purchase. An Illinois law forbade slavery while the Congress had prohibited slavery in the northern part of Louisiana Territory in the Missouri Compromise of 1820. Scott after some time sued his owner, arguing that his prolonged visits to and his stay into a free state and territory had made him a free man. The decision

\textsuperscript{12} John Hope Franklin and Alfred A. Moss, Jr., 231.

\textsuperscript{13} “Stony the Road we Trod: Alabama’s Role in the Modern Civil Rights Movement”, an international workshop organized by the Birmingham Civil Rights Institute and National Endowment for the Humanities (NÉH) at Birmingham, Alabama, attended by the author from June 24 to June 30, 2007.
of Missouri Supreme Court and the federal appeals court both denied the validity of Scott’s claim. Finally, the Supreme Court also questioned the validity of the case on the grounds that as Dred Scott was a Negro, not entitled to be citizen of the United States, therefore, he had no right to file a case in a Federal Court:

“The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guarantied by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution....”

And the answer of the Court to this question was “NO”. The court in its ruling declared the Negro slaves as “article of property” and not a citizen of the United States:

“The court thinks the affirmative of these propositions cannot be maintained. And if it cannot, [Dred Scott] could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts. It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guarantied to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded....”

The case, the Court declared, could not be taken up by the Circuit Court of the Federal Judiciary as one of the parties had no right to be a party in a federal case:

16 Ibid.
“As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such and brought back in that character, his status, as free or slave, depended on the laws of Missouri, and not of Illinois....

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must, consequently, be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction.”

Chief Justice Taney denied African-Americans citizenship of the United States on the grounds that the wordings of the Declaration of Independence “all men are created equal” did not include “the enslaved African race”. This decision of the Supreme Court not only damaged the prestige of the Court but it also brought the country to the brink of civil war. The decision was politically inspired and influenced by the pro-slavery politicians including the then Democrat President, James Buchanan of Pennsylvania. Buchanan and other pro-slavery politicians wanted the slavery issue to be decided in the Court rather than in the Congress because they were sure of a favorable decision by the heavily Southern dominated Court rather than in the Northern dominated Congress. The Court was headed by Chief Justice Roger B. Taney, who had replaced John Marshall in 1835, and seven members of the Court were supporters of slavery, mostly from the south. Only two members of the Court, John McClean of Ohio and Benjamin Curtis of Massachusetts were anti-slavery. Buchanan had even tried to influence Justice James Greer, a fellow Pennsylvanian, to support in their decision the judges who wanted to deny both Congress and the territorial legislatures the right to prohibit slavery in order to make the Court’s opinion look more like a national and not a sectional ruling.

The real damage was not done by the Court’s denial of the status of citizenship to Scott but by the comprehensive pro-slavery opinion of the Chief Justice Taney who declared that the Congress had no authority to

17 Ibid.
18 Marc Landy and Sidney M. Milkis, 351.
19 Ibid., 349-50.
prohibit slavery in the territories and that the Missouri Compromise in itself was unconstitutional.\(^{20}\)
The decision in this case disappointed the opponents of slavery but then came the Civil War and much changed after the War. The Emancipation Proclamation, issued by Abraham Lincoln in 1863 freed the slaves in the rebellious states. During the process of Reconstruction, three important amendments\(^{21}\) were added to the Constitution and there were hopes of more favorable attitude by the Judiciary in view of these important changes. But the expectations were not fulfilled.
Making the ‘Equal protection of the Laws’ principle embodies in the Fourteenth Amendment as the base, the US Supreme Court handed down two very important decisions in 1880s; in 1880, it declared a West Virginia law unconstitutional that required juries to be made only of white males and in 1883 it decided that it was unconstitutional for the Congress to prohibit racial discrimination in public accommodations. Hence the Civil Rights Act of 1875 was invalidated.\(^{22}\)
Apparentlly the two decisions look contradictory but the difference between them, in the eyes of the Court, seems to be that serving on a jury was an essential right that the state could not deny to any citizen on racial grounds because doing so was a violation of the Fourteenth Amendment\(^{23}\) as there could be no arrangement for separate juries, but there could be separate arrangement for registering at a hotel, therefore, the blacks and the whites could be treated differently at hotels and other public accommodations, depending upon the will of the owner of that public accommodation.\(^{24}\)
The major decision of the US Supreme Court concerning the legal status of the Fourteenth Amendment came in the case *Plessy v. Ferguson* in 1896. The Supreme Court rejected the appeal of Homer Plessy\(^{25}\) against a Louisiana law that required blacks and whites to occupy separate cars on railroad trains operating in that state. Plessy was claiming that the law was a violation of the Fourteenth Amendment. The Court decided that it did not violate the Fourteenth Amendment as it treated both the whites and the blacks “equally but separately”. The Court also declared that the

\(^{20}\) Ibid., 350-51.
\(^{21}\) The Thirteenth, Fourteenth and Fifteenth Amendments
\(^{23}\) Ibid.
\(^{24}\) Ibid.
\(^{25}\) Plessy was a light-skinned and one-eighth African who was traveling in the whites-only section of the East Louisiana Railway. He refused to move when asked to leave the whites-only section and was arrested. The Citizens Committee of New Orleans opposed to the segregation laws took the case to the Supreme Court but the decision of the court was not favorable.
equal protection clause guaranteed only political and legal equality but not social equality because if “one race be inferior to the other socially, the Constitution of the United States cannot put them on the same plane.”

The decision in the *Plessy* case, however, was an 8-1 majority ruling and one member of the Court Justice Harlan wrote a dissenting note, challenging the distorted interpretation of the Fourteenth Amendment. He insisted that “*Our Constitution is color-blind*” and that it was unconstitutional for a state to make laws based on racial grounds. He noted that the purpose of the Louisiana law was not to exclude whites from black railroad cars but solely to exclude blacks from white cars, which clearly negated the state’s claim that the law was not based on racial discrimination.

This “Separate but Equal” doctrine was first applied only to transportation but later on extended to education also in 1899 in the *Cumming v. Richmond County Board of Education* decision of the Supreme Court. This one decision of the U. S. Supreme court in its negative phase of the Civil Rights Movement prolonged the hardship and legal discrimination against the black people in the United States for fifty-eight more years. During this period, the Court made this “Separate but Equal” principle grounds for approving discrimination in a number of cases in which there was enough evidence of profound inequalities in practice.

**The Sympathetic Judiciary 1937-1965**

In the twentieth century, the Supreme Court started handing down decisions against the Jim Crow laws on constitutional grounds. This was the beginning of the positive role of the American Judiciary in cases related to the civil rights. In 1915, the Court declared an Oklahoma State Law that denied the right to vote to some citizens on the basis of race as unconstitutional in the widely known *Guinn v. United States*. It was an important United States Supreme Court decision that declared discrimination in voting rights on the basis of “the grandfather clause”. Under this clause, illiterate white voters were exempted from literacy tests on the grounds that their ancestors had either been eligible to vote prior to January 1, 1866 or were residents of "some foreign nation", while at the same time black illiterate voters remained disenfranchised.

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26 James Q. Wilson, 522.
27 Marc Landy and Sidney M. Milkis, 359.
28 James Q. Wilson, 522.
29 “Stony the Road we Trod: Alabama’s Role in the Modern Civil Rights Movement”.
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The Supreme Court declared that the grandfather clauses in the Maryland and Oklahoma constitutions was in violation of the Fifteenth Amendment and therefore had no legal standing because the 15th Amendment prohibited the states from discriminating in voting rights on account of race, color, or previous condition of servitude. An Act of Congress further strengthened this part of the 15th amendment in 1913.\(^3\)

It was the first ever favorable decision and a watershed in a civil rights suit but most of the African-Americans in the Deep South still remained deprived of their right to vote until 1950s and 1960s.

In 1917, the Supreme Court in Buchanan v. Warley declared a Kentucky State law unconstitutional, which provided for residential segregation. The Court declared that using police power to deprive a citizen of United States of his right to sell his plot of land to a colored person violated the 14th Amendment to the U. S. Constitution.\(^3\)

This decision of the Supreme Court was strengthened by another ruling of the Court in Shelley v. Kraemer in 1945. In this case, a black family purchased a house in St. Louis, Missouri, unaware at the time of the purchase that a restrictive covenant preventing the people of the Negro or Mongolian Race from owning the property had been in place. The white neighbors sued to prevent the black family from taking actual possession of the property that they had purchased. The Supreme Court of Missouri decided the case in favor of the white neighbors on the grounds that the restrictive covenant was enforceable against the purchasers as “a purely private agreement between the original parties thereto, which ‘ran with the land’ and was enforceable against subsequent owners.”\(^3\)

When an appeal was taken to the Supreme Court of the United States against this decision, it had to consider two very important questions. The first question was whether racially-based restrictive covenants violate the Fourteenth Amendment to the United States Constitution or not? Secondly, can these covenants be enforced by a court of law?


The attorneys who argued the case on behalf of Shelley were Thurgood Marshall and Loren Miller. The United States Supreme Court declared that although racially-based restrictive covenants did not violate the Fourteenth Amendment, yet the parties involved may voluntarily abide by the terms of a restrictive covenant and they may not seek enforcement of such a covenant because enforcement by the courts would necessitate state action. As such state action would necessarily be discriminatory and the enforcement of a racially-based restrictive covenant by a State is therefore unconstitutional under the Fourteenth Amendment.  

In 1929, an African American, Donald Murray, applied for admission to the University of Maryland Law School. His application was turned down but he was offered an out-of-state scholarship to study at some other state. He rejected an out-of-state scholarship and challenged the practice in the Maryland Court of Appeal as a violation of the equal protection clause of the 14th Amendment. The Court upheld Murray’s appeal in its decision in 1935 on the grounds that there were several inherent advantages of studying the law in the state where one intended to practice. The Court also declared that an out-of-state arrangement constitute a factual inequality and was below the standard of equality required by the equal protection clause. The Court decided that if there is no separate law school in Maryland for blacks, Murray should be admitted to an existing law school in Maryland instead of granting him an out-of-state scholarship to enable him to study at a law school in another state.  

This decision of the Maryland Court of Appeal in the Pearson v. Murray case was endorsed in 1938 by the Supreme Court in a case of similar nature Gaines v. Canada, Registrar of the University, et al ruling. In 1936 Lloyd Gaines applied for admission to the Law School of the University of Missouri. On rejection of his application for admission, he took his case first to the state courts and then to the federal courts. The State of Missouri had offered him the payment of his tuition fee in another state as there was no Law School for blacks in Missouri. In the decision of the Supreme Court in 1938, Chief Justice Hughes said that it was the duty of the state to provide education for all its citizens within the state. The failure of the state to provide this facility to the black

33 Ibid.
residents within the state while providing the same facility to its white citizens “is a denial of the equality of legal right to the enjoyment of the privilege which the state has setup, and the provision for the payment of tuition fees in another state does not remove the discrimination.”

Ten years later, in 1948, the Supreme Court took a similar position in *Sipuel v. University of Oklahoma* by issuing orders to the all-white University of Oklahoma Law School to admit a black student even though the state was planning to build a separate black law school later. The decision emphasized that the 14th Amendment required the state not to delay the provision of facilities for legal education to the black Americans if it is already providing the same to its white citizens. In other words, the Court declared that for education to be equal, it had to be available to both races at the same time and the people of one race could not be made to wait for its availability while the people of the other race had it readily available to them.

In the meanwhile, another Oklahoma Negro, G. W. McLaurin, demanded and gained admission to the graduate school of the state university. When the university officials segregated him in different facilities offered by the University, he again sued the university and the Supreme Court ordered, on June 5, 1950, an end to these segregation practices.

In the 1950s, *Sweatt v. Painter* was the first case that successfully challenged the "separate but equal" doctrine of racial segregation established by the 1896 case *Plessy v. Ferguson*. In Texas, a black man by the name of Heman Marion Sweatt was denied admission to the University of Texas School of Law because the Constitution of the State of Texas prohibited integrated education. At the time, no law school in Texas would admit blacks. The Texas trial court delayed a decision or the grant of temporary relief to the plaintiff for six months to allow the state time to create a separate law school only for blacks. The Court of Civil Appeals upheld the trial court decision and the Texas Supreme Court denied the plaintiff a writ of error on further appeal. When an appeal was taken to the Supreme Court of the United States by Sweatt and the National Association for the Advancement of Colored People, W.J. Durham and Thurgood Marshall pleaded Sweatt's case.

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36 John Hope Franklin and Alfred A. Moss, Jr., 365.
37 James Q. Wilson, 523.
38 Lucius J. Barker and Twiley W. Barker, Jr., 136.
39 James Q. Wilson, 523.
The NAACP was a bit reluctant in taking the Sweatt case to the Supreme Court because in 1950 it (the Supreme Court) was more conservative on most matters than it had been a few years earlier. Frank Murphy and Wiley Rutledge, probably the Court's most liberal members, died in 1949. Truman named Tom Clark, his attorney general, to replace Murphy, and Sherman Minton, a federal judge who had served with Truman in the senate, to replace Rutledge. Clark was from Texas and liberals in the Roosevelt tradition were uncomfortable that a conservative Southern Democrat would sit on the Court. Thurgood Marshall, the man who solicited most of the Civil Rights Suits in the 1950s had developed a good working relationship with Clark, whose views on race were reasonably liberal.\(^{41}\)

The Supreme Court gave the decision in *Sweatt v. Painter* case in favor of Heman Sweatt, ordering his admission to the all-white University of Texas Law School on the grounds that blacks were entitled to legal education of equal standard that was offered by the state to the students of other races and in Texas the law school for the blacks was not at par with the all-white University of Texas Law School in terms of faculty, curriculum and other facilities.\(^{42}\)

To many white Southerners, this was a frightening departure from the separate but equal doctrine. Most Southern states were afraid that the Court’s decision would soon open all public institutions of higher learning to the Negroes. Many states had already taken steps towards desegregation in institutions of higher learning either voluntarily or by court orders and had admitted Negroes.\(^{43}\) It was all because of a responsive judiciary which had sensed the inherent inequalities and injustices in the precedent set by the *Plessy v. Ferguson* decision in 1896. The Judiciary in the United States had started to demolish the race barriers at least in the field of education; this was the beginning of the end.

The important thing to note here is that in *Gaines v. Canada* and *Sipuel v. University of Oklahoma*, the comparative equality of separate schools for whites and blacks was not the issue, since there was no law school for blacks in both these states. But in the *Sweatt v. Painter* case, the equality of separate law schools for whites and blacks in terms of facilities was the key issue. In the latter decision, the Supreme Court had


\(^{42}\) Lucius J. Barker and Twiley W. Barker, Jr., 136.

\(^{43}\) John Hope Franklin and Alfred A. Moss, Jr., 366.
placed a question mark on the “Separate but Equal” doctrine but it had refused to fully scrap the doctrine. The final and full rejection of this doctrine was yet to come in 1954 when the Court declared the doctrine unconstitutional in Brown v. Board of Education.\textsuperscript{44}

The “Separate but Equal” rule was unjust but it had been made by the highest court in the United States and it could be undone only by that Court. The decision to fight legal battles against segregation was taken by the National Association for the Advancement of Colored People (NAACP) after some hesitation.\textsuperscript{45} In order to make the Supreme Court adopt a broader interpretation of the Fourteenth Amendment, the NAACP decided to bring before the Court cases in which it could be conveniently proved that a black was unfairly treated under the “Separate but Equal” principle. The main focus was on education and the strategy was to persuade the Court that separate educational facilities for people of different races could never be equal and were therefore unconstitutional.\textsuperscript{46}

In 1954, the Supreme Court of the United States handed down a historic judgment in the landmark case of Brown v. Board of Education of Topeka. In its ruling, the Court effectively overturned the 1896 Plessy decision by declaring that the principle of “Separate but Equal” was inherently unequal and discriminating. Subsequently, public schools were ordered to be desegregated. The Court observed that separating children in schools in blacks and whites had deleterious psychological effects on black children’s motivation to learn. It found that segregation generated “a feeling of inferiority as to their status in the community that may affect the hearts and minds in a way unlikely ever to be undone.” Therefore, declaring that de jure segregation (segregation enforced by law) was a form of discrimination.\textsuperscript{47}

This decision of the U. S. Supreme Court was considered a kind of second emancipation proclamation\textsuperscript{48} because the Brown Case did far more than reversing the Plessy v. Ferguson judgment of 1896, which held that equal protection of the law was not violated by segregation. It

\textsuperscript{44}Lucius J. Barker amd Twiley W. Barker, Jr., 136-137.
\textsuperscript{45}Founded in 1909 by a group of whites and blacks in the aftermath of a race riot.
\textsuperscript{46}James Q. Wilson, 523.
\textsuperscript{47}For full text of this landmark decision see Ritchi, 863. Also see Marc Landy and Sidney M. Milkis, 360 & Mark Elliot, Color-Blind Justice: Albion Tourgée and the Quest for Racial Equality from the Civil War to Plessy v. Ferguson (New York: Oxford University Press, 2006), 314, http://site.ebrary.com/lib/peshawar/Doc?id=10160542&ppg=327
unleashed a series of long overdue changes in all institutional spheres – employment, housing, voting and all other spheres of life where the wedge of law could break the barriers of racial discrimination.  

In all these legal cases in the courts, the 14th Amendment was the base on which the practice of “Separate but Equal” was challenged. The Amendment, however, was an opportunity and a problem at the same time. It seemed to guarantee equal rights for all but its understanding and interpretation can be extremely varied, depending on the broad and narrow reading of the key phrase “equal protection of the laws”. Its rigid interpretation suggests that the constitution would be color-blind and that no state law could distinguish between the whites and the blacks on the basis of their color and that segregation in schools and accommodation would be unconstitutional. Its flexible reading, however, suggests that although all citizens, irrespective of the color of their skin, had equal protection of the laws and certain basic rights but they could be treated differently in certain matters where they could be offered the same facilities separately on equal basis. The Supreme Court initially acknowledged the flexible interpretation but later on shifted its position to uphold the rigid interpretation of this key phrase of the Fourteenth Amendment in Brown v. Board of Education.

The Jim Crow laws were made by Southern Legislatures which were predominantly Democratic. The Democrats retained this domination of Southern Legislatures right up through the 1970s. The Supreme Court decision in the Brown v. Board of Education came under severe criticism from the Democratic Congressmen and in 1956 they even tried to move a resolution in the Congress against this decision called Southern Manifesto. It was signed by 96 Democratic Southern Congressmen and Senators. These Congressmen declared the decision of the Court as a violation of the system of checks and balances and crossing of its limits by the Judiciary:

“We regard the decisions of the Supreme Court in the school cases as a clear abuse of judicial power. It climaxes a trend in the Federal Judiciary undertaking to legislate, in derogation of


50 Section 1 of the XIV Amendment says, “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 laws.”

51 James Q. Wilson, 521-22.
the authority of Congress, and to encroach upon the reserved rights of the senate and the people (House of Representatives).”

This resolution also declared that the Supreme Court of the United States had exercised judicial powers in excess of its mandate and the decision was influenced by ‘personal political and social ideas’ instead of the constitution of the country. Some sections of the press also complained that the Court had overstepped its intended purpose of interpreting laws and had cast itself, instead, as a maker of laws with Brown v. Board of Education. However, another section of the press, even some traditionally conservative southern minded journals, at least accepted the decision as inevitable. Knoxville Journal surprised some but spoke for many when it wrote, “No citizen, fitted by character and intelligence to sit as a justice of the Supreme Court, and sworn to uphold the constitution of the United States, could have decided this question other than the way it was decided.” A group of leading Negro educators praised the decision in a statement entitled “It Was the Right and Moral Thing to do” and several groups of white churchwomen in the south declared that they accepted the decision “with humility.”

End of Official Segregation and Racial Discrimination

The Black Civil Rights Movement in United States was finally crowned with success when in 1964 the Congress through the most comprehensive of all the Civil Rights acts which ended segregation based on racial discrimination in all public facilities. The Judiciary provided the Congress with the impetus it needed to achieve a goal that helped United States getting rid of the inhuman practice of segregation and racial discrimination. But the Judiciary’s decisions in the land mark cases also needed help from the President and the Congress for implementation. Many Democratic governors of Southern states were openly defying the Court’s verdict. In September 1957, Arkansas Governor Orval Faubus resorted to call the state

53 Ibid.
54 Susan Weill, 47.
55 Lucius J. Barker and Twiley W. Barker, Jr., 367.
National Guard to obstruct a federal court order to desegregate the all-white Central High School in Little Rock. An unwilling Eisenhower, the President at the time, finally took action to enforce the court order as he felt that to do nothing in face of Faubus’s resistance would encourage every segregationist governor to defy the law. On September 24, a contingent of regular army paratroopers was dispatched to Little Rock to enforce the Court’s ruling.56

The Little Rock incident dramatically underscored the need for Presidential and Congressional support in order to achieve desegregation. Desegregation was quickly achieved after 1964 when all the three branches of the federal government worked in unison and used their authority against the South and its Jim Crow laws. It was a concerted effort of all the organs of the Federal Government that finally achieved success but the decisions of the Supreme Court initiated and facilitated the whole process.

Conclusion

As compared to the politicians and the Congress, the Judiciary was very slow to react to the human tragedy in the highly segregated US society. That was because of the fact that Judiciary in United States remained dominated by and remained under the hold of conservative minded southern justices, appointed by the presidents who had sympathies for supporters of white supremacy, and confirmed in their position by the Congress that had a considerable conservative majority in it. The composition of the government and the Congress may change in less than a decade in the United States but the composition of the judiciary takes at least three to five decades to change. That's because of the life tenure of the judges in the judiciary. The government and the Congress had started supporting the Civil Rights Movement as early as the 1920s but the Judiciary took a little longer to change its approach to the problem of segregation and civil rights because the old judges could not be removed so easily unless they died a premature death. However, the slow and steady change in the composition of the US Judiciary finally enabled it to deliver landmark decisions like Brown Vs. Board of Education (1954) which shook the very foundations of racism and segregation on the basis of race and color in the United States. Judiciary is not just one of the several pillars of a state and society rather it’s the main column of a successful state and responsible society. If it is not strong, there are no possibilities of achieving a stable society.

56 Marc Landy and Sidney M. Milkis, 366.
corrupt and weak, it can help in giving strength to injustice and tyranny. But it can also lead the people to freedom, justice and equality if it consists of bold and daring justices and resolves to fight against tyranny, inequality and injustice. The role of the U. S. Judiciary in the Black Civil Rights Movement is the best example of a constructive and reformative role of a vibrant and responsive judiciary. However, it might not have been possible for it to accomplish this task in isolation. The two other organs of the government, i.e. legislature and executive should act in harmony with the Judiciary to fulfill the hopes and expectations that are associated with a truly organized society. In the United States when the Congress was sympathetic, the Judiciary and the Executive were not just indifferent but rather hostile to the African Americans. When Judiciary became responsive, the executive in many southern states tried to hamper and resist the process of desegregation as a result of the favorable judgments of the US Federal Judiciary. Even the Federal Executive implemented the decisions of the US Supreme Court reluctantly due to the fear of losing the vote of the southern white population. In parliamentary form of government, the Executive and the Legislature are ought to be in harmony or else the system doesn’t work. In Presidential form of government, as in the United States, sometimes presidents have to face a non-cooperative and hostile Congress which makes it more difficult to act against its wishes. Wonders like desegregation and integration of society as happened in the United States are possible only when all the three organs of the government play their respective roles positively and act in unison. There must not be conflicts between the law makers, law enforcers and the interpreters of law.

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