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RACIAL DISCRIMINATION IN US VIS-À-VIS TO ITS INTERNATIONAL COMMITMENTS

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CHAPTER- I-INTRODUCTION

Human beings by virtue of being human beings, being born as human beings have some rights bestowed upon them, rights so connected deeply with them to the extent these rights can be deemed as “inseparable” and “inalienable” rights. Post WW2, Human Rights were given their due recognition which resulted into Universal Declaration Human Rights (1948). At present, there is worldwide acceptance that every human being should have some basic rights. Racial discrimination is an obstacle to realising the full extent of Human Rights. The Blacks particularly in US have been discriminated on the basis of their colour which has found in recent times quite ugly outlets that have transcended beyond the realm of humanity which exposes the ugly side of deep-rooted bias and the limits that can be crossed because of it.

Research Questions

- i. What is meant by racial discrimination?
- ii. Has US despite ratifying to ICERD fulfill its obligations?

1.1 Hypothesis

Racial discrimination often is misunderstood as just differentiating and discriminating on basis of skin color. But racial discrimination is not just restricted to skin color. It is much more than that with far more implications and outlets. United States which often proclaims itself as World Leader has often found itself grappling with the problem of racial discrimination and despite making grand dreamy speeches and tall claims, ground reality has not shown much change despite being in rights conscious and equality seeking 21st century.

1.2 The Scope of the study

Racial discrimination against blacks by Law enforcement agencies in the US.

1.3 Methodology

The present research is mainly a doctrinal research and analytical study. The relevant material is collected from the secondary sources. Materials and information are collected from journals, print and electronic media.

CHAPTER-II

WHAT ARE HUMAN RIGHTS?

All individuals being humans are entitled to these rights irrespective of their caste, creed, religion, sex, and nationality. Because these rights are “inseparable” and “inalienable,” no human being can live without these rights. Such is the deep interconnection between these rights and the element of being human. These rights are quintessential for every human being and is important for physical, moral, social, and spiritual welfare.¹ These rights act as an important catalyst for creating a conducive atmosphere where individuals can work, act, and think so as for them to lead a life by their liking, needs, wants and of some suitable conditions for themselves and their families.²

Some features of the Human Rights are Universality and inalienability, Indivisibility, Interdependence and inter-relatedness, equality and non-discrimination and participation and inclusion, accountability, and rule of law.³

Human Rights are also classified into further First-Generation Rights Civil and Political Rights- people have right to participate in the formation of their respective governments.

Second Generation Rights are economic, social, and cultural rights- right to adequate food, clothing, to work, to social security, to education to name a few.

¹ DR. H.O AGARWAL, HUMAN RIGHTS, pg. 2 (Central Law Publications 17th edn., 2020.)

² *ibid*

³ United Nations, *what are human rights?* UN <https://www.unicef.org/child-rights-convention/what-are-human-rights> (last accessed on 5/09/22)

A new set of understanding of rights has also emanated in which society as a whole collective enjoy those rights such as right to economic and social development, to a healthy environment to name a few.⁴

Human Rights, earlier were not given much recognition nor were they understood as something important for a society but after witnessing the horrors, the brutality and inhumanity of the Nazis post World War II, human rights was given its due (long overdue) recognition and acknowledgment which later gave us Declaration of Rights (1948) and nations across the World ratifying it albeit that meeting its own fair share of criticism from the East, it was a positive step nonetheless towards acknowledging and understanding the importance of human rights in a society. At present, there is world wide acceptance that every human being should have some basic rights and that has reflected both at domestic and global level. Such is the level of recognition of importance of human rights that they are seen as “rights which no can be deprived of without a grave affront to justice”⁵

WHAT IS RACIAL DISCRIMINATION?

The origins of the word racism not having a single interpretation owes its origins to back in 1902 and in 1950, it was first found and given meaning in a UNESCO publication titled the *Race Question*.⁶ It defined racism as “a particularly vicious and mean expression of the caste spirit. It involves belief in the innate and absolute superiority of an arbitrarily defined human group over other equally arbitrarily defined groups and [a]s an ideology and feeling, racism is by its nature aggressive.”⁷

The International Convention on Elimination of Racial Discrimination defines racial discrimination as “[d]iscrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful

⁴ Ibid

⁵ L.J MACFARLANE, THE THEORY AND PRACTICE OF HUMAN RIGHTS, pg.7 (Maurice Temple Smith 1985)

⁶ Anna Spain Bradley, *Human Rights Racism*, 32, HARVARD HUMAN RIGHTS JOURNAL pg. 2, (2019)

⁷ Supra Note 6 at pg.26

relations among nations and as a fact capable of disturbing peace and security among peoples.”⁸ Racial discrimination can be understood as when an individual is treated on another footing or disadvantageously than other person for/in a similar situation owing to the former’s race, skin colour, descent, national, ethnic origin, or immigration status.⁹

Forms in which racial discrimination can be witnessed is overt bias and prejudice. Stereotyping is another form of racial discrimination which characterise and attach same attributes to all members of a group or community completely side-lining the individuality aspect of persons and treating every member from that group and mitigating same behaviour to all of them alike. Racial profiling is another form that involves stereotypes against particular people from a particular community, group. Divided opinions on racial profiling are that it is a great tool to weed out the criminals from the society and some argue against it as giving an open hand to the bias and prejudice and sometimes even vendettas that exist in minds that find an ugly outlet.

The outlets of racially discriminatory behaviour call for racial discrimination as a violation of human rights as it foremost affects affected people’s right to live a dignified life.

CONVENTION AND COMMITTEES ON RACIAL DISCRIMINATION

To combat the ailment of racial discrimination, conventions have been adopted chiefly the International Convention on Elimination of All Forms of Racial Discrimination (ICERD). It has 3 Parts and 25 Articles.¹⁰

Article 4 states “States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form”¹¹ Article 5 clause (b) states “the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group

⁸ G.A. Res. 1904 (XVIII), art. I, UN Declaration on the Elimination of All Forms of Racial Discrimination (Nov. 20, 1963)

⁹ United Nations, *Fight Racism*, UN <https://www.un.org/en/fight-racism> (last accessed on 6/09/22)

¹⁰International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 Dec. 1965, 660 U.N.T.S. 195 {entered into force 4 Jan, 1969}

¹¹ ICERD, Art. 4

or institution”¹² clause (i) states “the right to freedom of movement and residence within the border of the State”¹³

ICERD States have to submit comprehensive reports to the Committee on Elimination of Racial Discrimination (CERD) every 4 years with 2-year brief reports containing updates. A representative from the State may introduce the report when it comes for examination before the Committee. Committee makes a report which is sent to General Assembly which has summary of the proceedings, suggestions, and recommendations. CERD has categorically referred that the Convention can address both present problems and future problems as well and by ratifying, all State parties must incorporate/introduce the provisions into their respective domestic laws. Further, procedure for addressing and taking in complaints from individuals or groups complaining of violation came into place in 1982.¹⁴

The ICERD has 3 procedures which allow Committee on Elimination of Racial Discrimination (CERD) to review the judicial, administrative, and legal measures taken by State parties with objective to fulfil their obligations to fight against racial discrimination. Additionally, CERD provides guidelines to the State parties w.r.t preparation of reports and can ask them for additional information, if required. CERD as laid out by Convention is made of 18 experts who serve in their personal capacity are of “high moral standing and acknowledged impartiality”. Members are elected for a 4-year term by the State parties. Elections for half membership is done at 2-year interval. CERD is an “autonomous” body. Members cannot be dismissed nor without their consent replaced. As per the Convention, CERD reserves the right to formulate their own rules of procedure and receive no external inputs. CERD gives its reports to UNGA through the Secretary General.¹⁵

RACIAL DISCRIMINATION AGAINST BLACKS IN US BY LAW ENFORCEMENT AGENCY

Post-WW II, in US, Afro-American soldiers back from the war were subjected to “renewed” racism. Along with this, ongoing unequal status quo of society led to a spark of political, economic,

¹² ICERD, Art. 5 cl.(b)

¹³ ICERD, Art.5 cl.(i)

¹⁴ OHCHR, *The Committee on the Elimination of Racial Discrimination*, OHCHR, <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet12en.pdf> (last accessed on 7/09/22)

¹⁵ Ibid

and cultural protests that would later culminate in the Civil Rights Movement.¹⁶

One of the most prolific Black rights' activists Dr. Martin Luther King Jr.'s non-violent movement captured the imagination and hopes of millions of black people in the US thrusting forward for better civil rights and status in the American society. His famed speech "I Have a Dream" is understood as the height of the Civil Rights Movement in the US which thrust forward the anti-racial discrimination movement not only in US but in the World.¹⁷

United States signed ICERD in 1966 and ratified in 1994¹⁸ but despite widespread calls for end to racial discrimination in US and a particularly stained history of discord, divide and discriminatory behaviour towards the blacks in US, the American society, at large, is still plagued by racial divide and discriminatory behaviour. Racial discrimination against the Blacks has been often exhibited not only by citizens but also by the police departments across US. The height and spread of it is such that stemming out of racial profiling, in America, "shooter bias" has come where ordinary people link criminal acts (robbery, car-jacking etc) being committed by black men¹⁹ Racial profiling by law enforcement agencies has led to sharp rise in lawsuits since the 1990s. Black drivers on an average were likely to be stopped 2-3x on highways and stopped by police on roads. Black people were over 9x times more stopped than white drivers.²⁰

As per Statista Research Department,²¹ Black Americans face more police shootings than any other ethnicity in US, 40 shootings per million of black population as of August'22. The rate at which black Americans are killed by police is more than twice as high as the rate for white

¹⁶ CNN Library, *1965 Selma to Montgomery March Fast Facts*, CNN <https://www.cnn.com/2013/09/15/us/1965-selma-to-montgomery-march-fast-facts/index.html> [<https://perma.cc/42VP-3NUR>] (last accessed on 7/09/22)

¹⁷ Keynote speech at the "March on Washington" (Aug. 28, 1963), reprinted in Martin Luther King, Jr., "I Have a Dream," in TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR., 218-19 (James M. Washington ed., 1986)

¹⁸ Maya K. Watson, *The United States' Hollow Commitment to Eradicating Global Racial Discrimination*, American Bar Association, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future-part-ii/the-united-states--hollow-commitment-to-eradicating-global-racial/#:~:text=The%20United%20States%20and%20ICERD,-The%20goal%20of&text=The%20United%20States%20signed%20ICERD,an%20end%20to%20racial%20discrimination. (last accessed on 7/09/22)

¹⁹ Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERS. & Soc. PSYCHOL. 876 (2004)

²⁰ Brendan O'Flaherty & Rajiv Sethi, *Handbook of Regional and Urban Economics*, 2015, Science Direct <https://www.sciencedirect.com/topics/social-sciences/racial-profiling> (last accessed on 7/09/22)

²¹ Statista Research Department, *People shot to death by U.S. police 2017-2022, by race*, Statista, <https://www.statista.com/statistics/585152/people-shot-to-death-by-us-police-by-race/> (last accessed on 7/09/22)

Americans.²²

George Floyd's death which was a major highlight of "Black Lives Matter" movement was a result of ugly discriminatory conduct on part of Minneapolis Police officer Derek Chauvin who put his knee on Floyd's neck for 9+ minutes which was one of the factors which led to his death. Derek Chauvin was convicted of murder and sentenced to 22.5 years.²³

Despite ratifying to ICERD in 1994, The United States has failed "to materially adhere" to obligations laid down by ICERD by way of submitting reservations that effectively cull the treaty's effect, failure to enact domestic legislation and critically, its citizens cannot present their case/complaint to ICERD and not submitting in timely reports of the measures undertaken to combat racial discrimination.²⁴

Key reason US puts forth is that it has "sufficient" domestic laws to address the problems. Reason behind Committee's insistence for enactment of domestic legislation by US is based on the difference of interpretation between US's laws and ICERD's take on racial discrimination. ICERD's take does not require the element of discriminatory intent and if a policy is "disparate" it is construed as discriminatory however US's laws require that discriminatory intent be proved which translates into a burden of proof difficult to discharge thus making the remedy difficult to get. This gives leeway to hate speech being masked under the garb of free speech and often disseminated in the American society.²⁵

CONCLUSION

Racial discrimination is not just limited to contours of colour of skin, it is much beyond that. Racial discrimination is a by-product of deep-rooted bias, ignorance, and an artificial sense of superiority. It is sad that the world as a collective society engage in so many debates and does so much to facilitate a greater exercise of rights and a push towards a better society only to be deterred and suffer setbacks. Racial discriminatory behaviour is one such setback. It is ironical that United

²²The Washington Post, correspondent, *1,044 people have been shot and killed by police in the past year*, Washington Post, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (last accessed on 7/09/22)

²³ New York Times correspondent, *How George Floyd died, and what Happened Next*, New York Times, <https://www.nytimes.com/article/george-floyd.html> (last accessed on 7/09/22)

²⁴ Supra Note 18

²⁵ Ibid

States of America, the self-proclaimed leader of the “Free World” can be understood as a breeding pit for racial discrimination, , the US while flashing its First World country status fails miserably when it comes to actually translating its cherished status into reality. Additionally, United States has a pattern of disregarding International Organizations efforts and thinking, it has not ratified to ICERD (and CEDAW) both on the grounds that its domestic laws are sufficient enough to address the issues while there is ample evidence on an almost daily basis that the domestic laws and the subsequent law and administrative arms are clearly failing to protect and come to aid of its citizens, sometimes they themselves engaging in racially discriminatory behaviour and no check or corrective action is taken against them has led to violation of rights as mentioned in Art. 5 cl. (b) and (i) of ICERD. US remains adamant that no ratification or full commitment is necessary despite CERD giving strong credible reasons to do so while on other hand, it often preaches to the world about the necessity and benefits of being a part of global community (propelled by prosperity, equality and peace) with shared goals and vision which begs the question, Is the US really committed to the vision of equal, peaceful and prosperous society that it paints to the world and its citizens or does it think of these international organisations as an instrument of its soft power. US despite having an already long-strained and coloured by blood history makes no strong efforts to combat racial discrimination and achieve unity. Police brutality and shooting, discriminatory behaviour resulting in stereotypes, racial profiling arbitrary unjustified checks on black citizens thus violating those people’s right to live a dignified life, equality and movement within their country as enshrined in ICERD and their own laws are violated at the most basic yet deepest levels. Even higher status black people are still looked down upon by their equivalent white counter parts. The problem of racial discrimination in US is incessant with no real solutions geared to bring an ever divided and racially charged society to come together and co-exist harmoniously peacefully and equally.