

DISCRIMINATION, DISDAIN AND DISGRACE: *COOPER V. AARON* AND THE POWER OF JUDICIAL REVIEW

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I. Introduction

REGARDLESS OF the jurisdiction, the decision of the apex Court is binding on the subordinate Courts in the legal system. The situation becomes concerning if the judgements passed by the apex body are not given any sanctity, especially when this disgrace is brought about by the executive body itself. Principles enshrined in the Constitution are not merely aspirational; they are actively binding and demand ongoing implementation and enforcement. Equality is one of the important principles which should not be compromised because it is basic to the existence of human beings. And the disdainful act of discrimination is a strict violation of this cardinal principle. The case of *Cooper v. Aaron*¹ highlights the atrocious acts of the government of the United States. This landmark case played a crucial role in reinforcing the supremacy of the Constitution. It emphasized that state officials cannot disregard federal court orders based on the Supreme Court's interpretation of the Constitution. This case helped ensure that the desegregation mandate of *Brown v. Board of Education*² would be enforced, despite any resistance.

II. Background

In the famous case of *Brown v. Board of Education*,³ the racial segregation of schools was unconstitutional as separate educational facilities for black and white students was inherently

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¹ *Cooper v. Aaron*, 358 U.S. 1 (1958).

² *Brown v. Board of Education*, 347 U.S. 483 (1954).

³ *Supra* note 3.

unequal as it violated the Equal protection Clause of the Fourteenth Amendment. Followed by the aforementioned case, came the landmark judgement of *Cooper v. Aaron*,⁴ where the U.S. Supreme Court, focused on judicial supremacy and laid down that the rulings given by the apex judicial body *i.e.*, the Supreme Court are binding on all the government authorities. The Little Rock School Board, Arkansas intended to carry out their plan of racial desegregation to comply with the judgement of *Brown v. Board of Education*,⁵ but faced continuous hindrance by the Governor and other state officials.

The Little Rock School Board, facing this resistance, sought a delay in implementing their plan for two and a half years. The plan was approved by the District Court for the Eastern District of Arkansas but the National Association for the Advancement of Colored People (*hereinafter* referred as 'NAACP') representing the Black students appealed the decision to the Eighth Circuit Court of Appeals. The Supreme Court gave a unanimous *per curiam* decision and held that the interpretation of the Constitution which was done by the Court has to be given supremacy and has to be followed by the State and its officials because the law laid by them is the "Supreme Law of the Land."

III. Facts and Issues

In the landmark case of *Brown v. Board of Education*,⁶ 1954, the Supreme Court of United States held that racial segregation in public schools is unconstitutional and it violated the "Equal Protection Clause of the Fourteenth Amendment."⁷ The Fourteenth Amendment, ratified in 1868, guarantees all citizens "equal protection of the laws," and *Brown v. Board of Education* held that segregated schools violated this principle, thus polarizing the entire nation. In the same line, the Little Rock, Arkansas School District adopted a plan to desegregate the public schools on a basis of a two-and-a-half-year plan. The plan had to begin in the year 1957 where the desegregation would be initiated from the high school level and later on followed at the Junior School and the Elementary School levels. Meanwhile, the Arkansas State passed a legislation which has violated the directions of the Supreme Court related to the desegregation of schools. An amendment was made to the State Constitution which declared the desegregation to be unconstitutional and laid down a law which enabled attendance of school

⁴ *Supra* note 2.

⁵ *Supra* note 3.

⁶ *Ibid.*

⁷ Passed by Congress on June 13, 1866, and ratified on July 9, 1868, the 14th Amendment extended liberties and rights granted by the Bill of Rights.

students to be racially mixed not compulsory. Even though the Arkansas General Assembly opposed desegregation, still the School Board carried on the desegregation plan and eventually nine African-American students were admitted to Central High School in the fall of that year on September 3, 1957.

However, a day before, on September 2, 1957, the Governor of Arkansas (Orval Eugene Faubus) ordered the Arkansas National Guard troops to block those nine African American children from attending the Central High School. The school authorities were not prepared for such violence. Due to the prevailing situations, the School Board requested the African-American students to go back and not to attend school until the entire problem is fixed. The School Board then, on September 3, 1957, approached the District Court to seek for an alternative plan to the original plan of desegregation. However, the Court was of the opinion that the plan should not be moved and be implemented as it was initially planned out to be.

On the next day, those African-American children again tried to enter the school but their way was again blocked by the Arkansas National Guard troops. The whole incident stretched for up to 3 weeks. The School Board again approached the District Court to seek temporary injunction for the school desegregation plan but were denied for the same. The District Court further ordered immediate investigation to look into the prevailing situation of facts to the United States Attorney for East District of Arkansas. As a result of the investigation, the Court found out that these children were being obstructed by the National Guard troops sent by the Governor and thereby the Court granted preliminary injunction which prohibited the Governor as well as the National Guard troops to interfere with the order of the Court to carry on desegregation. After the whole incident, on September 23, 1957, these children attended their school but later had to be shown their way out because of the demonstrations being made against them.

Further, on 25 September 1957, the President of the United States sent federal troops to help these children enter the school premises. They then, attended the school for an entire period of one year. But later, in the year 1958, the School Board and the Superintendent of Schools filed a petition before the District Federal Court requesting to postpone the program of desegregation owing to the fact that the school had suffered a lot of public hostility and financial losses in the past one year at the racially segregated schools owing to the hatred spread by the Governor and the Legislature. This hindered the entire educational program at those schools. The District

Court granted relief to the School Board agreeing to the fact that “the past year in the desegregated school had been one of chaos and turmoil in which the African American students endured violence against them and their property, created high tension among teachers and parents, and had an adverse effect upon the educational program.”⁸

The African-American children then preferred an appeal to the United States Court of Appeals for the Eighth Circuit and a petition of certiorari was filed at the United States Supreme Court. The US Supreme Court waited for the decision of the Court of Appeals for the Eighth Circuit. The United States Court of Appeals for the Eighth Circuit reversed the decision of the District Court and gave its judgement in favor of the defendants since the decision that delayed desegregation undermined the ruling of *Brown v. Board of Education*.⁹ The delay seemed like an attempt to avoid desegregation and the United States Court of Appeals for the Eighth Circuit, upholding the Constitution, couldn't endorse a delay that perpetuated this inequality. The School Board, *i.e.*, plaintiffs then approached the US Supreme Court to seek relief. The issues that came before the Hon'ble Court then were that:¹⁰

- a. Should the Court support the postponement of the plan of desegregation?
- b. Are the State and its officials bound by the decision of the Supreme Court of United States mandating desegregation?

IV. Arguments Advanced

A. Arguments Presented by the Plaintiff (the School Board)

The arguments of the School Board included the following:

1. The School Board contended that there was huge unrest and chaos on part of the Governor of Arkansas on account of the desegregation plan.
2. The School Board contended that the desegregation plan should be postponed till the case of *Brown v. Board of Education*¹¹ is challenged.
3. The desegregation of schools, in turn, proved to be a huge loss to the education system and led to the students facing severe problems in gaining education.

⁸ *John Aron v. William G. Cooper*, 143 F. Supp. 855 (1956).

⁹ *Supra* note 3.

¹⁰ *Supra* note 2.

¹¹ *Supra* note 3.

4. Also, in the year 1957 to 1958, the Central High School suffered huge financial losses and the quality of performance also got degraded. The attorney substantiated evidences for the same.

B. Arguments Presented by the Respondents (the Students)

The arguments of the Students were as follows:

1. Any further delay in the desegregation plan would cause harm to the Black students who are in favor of maintaining peace.
2. Passing a decision in favor of the School Board would lead to the Court overruling its own decision in the case of *Brown v. Board of Education*.¹²
3. The decision of the Court of Appeals of the Eighth Circuit should be affirmed.

V. Judicial Reasoning and Deliberations

The decision in *Cooper v. Aaron*¹³ was a unanimous judgement with no dissenting opinions. The decision was pronounced on September 12, 1958 by a nine Judge Bench consisting of Chief Justice Mr. Warren, Mr. Justice Black, Mr. Justice Frankfurter, Mr. Justice Douglas, Mr. Justice Burton, Mr. Justice Clark, Mr. Justice Harlan, Mr. Justice Brennan and Mr. Justice Whittaker. The Court held that the actions of the Governor and states officials were unconstitutional. The rights of the Black Students which were guaranteed to them by the Fourteenth Amendment which provides equal protection to everyone could not be infringed. The plea of the counsel seeking postponement of the desegregation plan was rejected on the basis of the principle of judicial supremacy emphasizing that state officials are bound by the Supreme Court's interpretation of the Constitution. Granting the Little Rock School Board's request for a delay would have essentially allowed them to undermine the *Brown v. Board of Education*¹⁴ decision.

Secondly, delaying desegregation would further deny Black students their rightful access to education as guaranteed by the Fourteenth Amendment's Equal Protection Clause. Also, considering the Constitution as the supreme law of the land, and the Supreme Court embodied

¹² *Supra* note 3.

¹³ *Supra* note 2.

¹⁴ *Supra* note 3.

with the duty of interpreting the constitution, the principle laid down in *Marbury v. Madison*¹⁵ which emphasized on judicial supremacy was also highlighted.

A. Issue No. 1:

The US Supreme Court while affirming the decision of the Court of Appeals of the Eighth Circuit, was of the opinion that the plan of desegregation of schools could not be postponed. It had due regard of the contention of the School Board alleging good faith in carrying out all the plans for desegregation, yet it does not form a ground to postpone the integration plan because that would be violative of the Constitutional right which guarantees equal justice under law as enshrined in the Fourteenth Amendment to the US Constitution which states that: “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.”

This Amendment formed the basis of various landmark judgements, one of which is *Brown v. Board of Education*¹⁶ which has been expressly referred to in this case also. In the said case, it was laid down that racial grounds cannot be a criterion for the Government for barring children from attending schools as it would be violative of the Fourteenth Amendment. The Court also dismissed the idea of postponing the desegregation plan until the said case has been challenged by stating that: “This Court rejected the contention that it should uphold a suspension of the Little Rock School Board's plan to do away with segregated public schools in Little Rock until state laws and efforts to upset and nullify its holding in the Brown case have been further challenged and tested in the Courts.”

The Court placed importance to the decision of the Brown case and made it a basis for pronouncing this decision. The Court also pointed out that the Governor and the State officials tried to defy those nine children from attending school and made every possible effort to block their way to school which was not correct on their part. Apart from that, the Government cannot make laws and amendments to undermine the rulings of the Supreme Court and deny people of their rights.

¹⁵ *Marbury v. Madison* 5 U.S. 137 (1803).

¹⁶ *Supra* note 3.

B. Issue No. 2:

A major part of the *per curiam* judgement was written by Justice Willian J. Brennan Jr. The judgement was pronounced on September 12, 1958. Justice Frankfurter separately pronounced a concurring opinion. Reaffirming the major text of the judgement given by Justices Brennan and Black, Justice Frankfurter, separately also talked about judicial supremacy and also expressed his concern upon the actions of the governor of our concerns and the state officials.

- Per Curiam Opinion:

The Supreme Court of United States was of the opinion that the Governor as well as the state officials of Arkansas would bound by the judgement of the Supreme Court given in the case of *Brown v. Board of Education*. Merely for the sake of maintaining “order and peace,” those nine children cannot be withheld from exercising their constitutional right of equality before law guaranteed by the Fourteenth Amendment. The Court clearly stated that “the controlling legal principles are plain. The command of the Fourteenth Amendment is that no ‘State’ shall deny to any person within its jurisdiction the equal protection of the laws.” The Court while condemning the actions of the Arkansas State Governor and state officials stated that “the rights of children to attend school and gain an education cannot be sacrificed or yielded to the violence and disorder.”

The Supreme Court, therefore, ordered to continue with the desegregation plan without any postponement thereby passing of decision in favor of the African-American children to attend the Central High School. The legislature cannot adopt means to surpass the decision of the Supreme Court by passing any law or amendment which allow them a backdoor entry to nullify the decision of the Supreme Court and impose their arbitrariness. The Court referred to the case of *United States v. Peters*,¹⁷ and stated, “if the legislatures of the several states may, at will, annul the judgements of the Courts of the United States, and destroy the rights acquired under those judgements, the constitution itself becomes a solemn mockery...” The Court was of the opinion that even if the state does not feel that the “decision given is correct, still it should make a conscious effort to enforce it.

¹⁷ 9 U.S. 115 (1809).

The Court specifically opined:

As this case reaches us, it raises questions of the highest importance to the maintenance of our federal system of government. It necessarily involves a claim by the Governor and Legislature of a State that there is no duty on state officials to obey federal Court orders resting on this Court's considered interpretation of the United States Constitution... We reject these contentions.

The Supreme Court emphasized on the Supremacy and Oaths Clauses given under Article VI of the US Constitution¹⁸ which states that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any state to the Contrary notwithstanding" which connotes that Constitution is the "supreme law of the land" and even the state government is bound by it. Clause 3 of Article VI provides that the state officials shall take the oath of upholding the Constitution and by going against the decision of the Court which is the interpreter of the Constitution, the officials are doing nothing but breaking their own oath.

The Court also emphasized that the Supreme Court is the "interpreter" and the "voice" of the Constitution as considered in *Marbury v. Madison*,¹⁹ which makes it an obligation for the state government to follow the Supreme Court decisions and respect its precedential value. The case of *Brown v. Board of Education* was the first decision in line favoring racial desegregation relying on the Fourteenth Amendment of the US Constitution which is the "equal protection clause". The Court believed that racial segregation of African American children is grossly unfair and has a "detrimental effect of the education and personal growth of the children" and that it would develop a sense of inferiority among those children.

The Court clearly stated that:²⁰

The constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by state legislators or state

¹⁸ The Constitution of United States, art. 6, para. 2.

¹⁹ *Supra* note 18.

²⁰ *Supra* note 2 at para 25.

executives or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted “ingeniously or ingenuously.

Also, the Court held that: “The interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States anything in the Constitution or Laws of any State to the Contrary notwithstanding.”²¹

- **Concurring Opinion- Justice Frankfurter**

Justice Frankfurter views were in line with the majority opinion yet he pronounced a separate concurring opinion emphasizing on judicial supremacy. He was extremely dissatisfied with the actions of the Governor of the state of Arkansas and also the state officials. According to him, the actions of the State Legislative body to pass a law to sideline the decision of the Court was unacceptable. Laying emphasis on the concept of judicial supremacy, he stated, “our kind of society cannot endure if the controlling authority of the Law as derived from the Constitution is not to be the tribunal specially charged with the duty of ascertaining and declaring what is “the supreme Law of the Land.”

Justice Frankfurter further believed that the deeds of the State officials were against “Spirit of our Nation” because “the power of the State was used not to sustain law, but as an instrument for thwarting law.” His opinion was inclined towards the “Supreme Law of the Land” *i.e.*, the Constitution of United States and the duty of the State officials to abide by that duty. He believed that the State Government should place Constitution at the highest value and should abide by the decisions of the Supreme Court and maintain a sanctity of that duty.

VI. Critical Analysis

Mark Tushnet in his broader analysis of *Brown v. Board of Education* also touches upon *Cooper v. Aaron*, exploring the significance of both cases in the fight for racial equality in education.²² The judgement of *Cooper* case is one of the landmark judgements in the history of American Constitution. In the post *Brown v. Board of Education* era, *Cooper v. Aaron* is

²¹ *Id.*, at para 27.

²² Mark Tushnet, Why We Talk About *Brown v. Board of Education*, *Yale Law Journal* 1721-1774 (1987).

positioned as a key judgement in the historical overview of the Supreme Court's rulings on racial discrimination in education.²³ Huge precedential value has been given to the case of *Marbury v. Madison*²⁴ and the Court considering itself the “interpreter” of the Constitution which is the “supreme law of the land”²⁵, established the principle of judicial supremacy and placed itself at a higher footing.

The clear-cut idea of the Court was that even if the state does not agree with the decisions of the Supreme Court still, it is bound by the authority of the federal law and cannot make any legislation or amendment which goes against the “law of the land”. *Marbury v. Madison* was a case in which the Court established the principle of judicial review but *Cooper v. Aaron* took it a step ahead and emphasized on judicial supremacy, which after the case “has been respected by the US Supreme Court and the country as a permanent and indispensable feature of their constitutional system.” *Cooper v. Aaron* not only reaffirmed *Brown v. Board of Education* but also sent a clear message to states that they are obligated to comply with federal court orders related to desegregation.²⁶ The Supreme Court gave high reliance to their interpretation of the Fourteenth Amendment of the US Constitution and termed it as the “law of the land”.

Also, the states were reminded of their power to make laws and do not go beyond what the federal law allows them to. Any law, which was in contravention to the Equal Protection Clause of the Fourteenth Amendment was constitutionally invalid and would hold no value. Basically, it clarified that all the citizens have equal right to education irrespective of their race. *Cooper v. Aaron* was a pivotal moment, demonstrating the Court's willingness to use its power to enforce desegregation in the face of Southern resistance.²⁷ The case of *Cooper v. Aaron* had a significant impact on the American society. Various other states which were willing to challenge the integration plan now had a landmark decision to look up to.

²³ J. Harvie Wilkinson, The Supreme Court and Racial Discrimination in Public Education: The Warren Court Years 3(2) *Virginia Law Review* 737-788 (1973).

²⁴ *Supra* note 18.

²⁵ U.S. Const. art. 6(2).

²⁶ Christopher W. Schmidt, *Cooper v. Aaron* and Judicial Supremacy University of Arkansas 41(2) *Little Rock Law Review*, 255-272 (2019) .

²⁷ Michael J Klarman, *From Jim Crow to Civil Rights* (The Supreme Court and the Black Struggle. Oxford University Press, 2004).

VII. Conclusion

The case of *Brown v. Board of Education*²⁸ laid down a foundation, in the years 1950s and 1960s, for the principle of the segregation of schools. Legal scholar Alex McBride said, “If *Brown v. Board of Education* provided the foundation for school integration in the 1950s and 1960s, *Cooper v. Aaron* provided the muscle. Though Cooper simply reiterated constitutional principles that were already accepted, the decision affirmed the power of the federal courts to enforce federal civil rights laws and court decisions against the states, and the primacy of the Supreme Court in defining what the Constitution requires.”²⁹ Though the point of desegregation of schools was duly recognized in the case of *Brown v. Board of Education*, the same was reiterated in the present case by laying down emphasis on the Fourteenth Amendment of the US Constitution and the judicial supremacy of the Supreme Court in interpreting the Constitution.

The Court clearly stated that “it holds supremacy in the interpretation of the Federal law and is embodied with the power of enforcing the rights provided by the Constitution.”³⁰ The Court stated that, “the state’s compliance with the principles of civil rights, as articulated by the federal Court is indispensable for the protection of the freedoms guaranteed by fundamental charter for all of us. Our constitutional ideals of equal justice under this law is thus made a living truth.”³¹

The complete dispute for the plan for desegregation of schools continued for a very long period of time. Firstly, when the nine African-American students were being stopped by the Governor who deployed the National guards to prevent the students from attending the school, the School Board and the District Court were caught off guard since they were not prepared for it. Initially, the Court asked the students to go back and attend the school again and ordered for the continuation of the desegregation plan. But when the Governor continuously denied the entry of the students for three weeks, the District Court ordered for an investigation by the United State Attorney General. As per the report of the Attorney General, it came out that the students were being obstructed by the Governor and the state officials.

²⁸ *Supra* note 3.

²⁹ Alex McBride, “Thirteen: Media with Impact, PBS, *Cooper v. Aaron*” (1958), available at: https://www.thirteen.org/wnet/supremecourt/democracy/landmark_cooper.html (last visited Jun 21, 2024)

³⁰ *Supra* note 2 at para 27

³¹ *Ibid.*

The District Court then, ordered the Governor and the state officials to stop interfering with the desegregation plan and obstructing the path of the children. Later, when an application was filed by the School Board and the Superintendent of the schools to postpone the program of integration on February 20, 1958, the District Court allowed for the postponement and gave its judgement on June 20, 1958. This is when the aggrieved respondents approached the Court of Appeals of Eighth Circuit against the decision of the District Court. The Court of Appeals reversed the decision of the District Court on August 18, 1958. Later, on September 12, 1958, the Supreme Court of United States unanimously held that their interpretation of the US Constitution was the “Law of the Land” and has to be followed irrespective of whether the state officials agree to it or not, thereby affirming the judgement given by the Court of Appeals. Since then, the principle of judicial supremacy became an important part of the US Constitution.

The idea of the Court was clear that it was the “interpreter” of the federal law and the state officials are bound by its rulings. It eliminated any doubt whatsoever regarding the fact of compliance of the decision of the Supreme Court. This case formulated an important precedential value for the upcoming cases challenging the plan of the segregation of schools. *Cooper v. Aaron* was not the last case which talked about the desegregation plans in schools. There were various other cases which came in subsequently which challenged the desegregation plan and as a result the process moved ahead in a sluggish manner. This case would be remembered as a milestone in the Civil Rights Movement where nine African-American children, due to the willingness to go to school, fought a legal battle which even grabbed the attention of U.S. Government to a small town of Arkansas. igniting a national firestorm. *Cooper v. Aaron* didn't directly address segregation itself, as that had already been established as unconstitutional in *Brown v. Board of Education*. Instead, it focused on judicial supremacy.

The Supreme Court's unanimous judgement reaffirmed that state and local officials must comply with the Court's interpretation of the Constitution. This decision was crucial in enforcing *Brown*³² case and dismantling segregation. It set straight the principle of judicial supremacy. The case marked a turning point in the fight for racial equality, empowering the federal government to take a more active role in dismantling segregation The Congress

³² *Supra* note 3

thereafter, enacted the legislations like the “Civil Rights Act”³³ and the “Voting Rights Act”³⁴ to eliminate the evils of racial segregation and discrimination. These landmark laws aimed to dismantle the systems of racial discrimination and segregation entrenched across the country and this case served as a catalyst for this legislative action. The Supreme Court's strong support for school desegregation, along with resistance from the executive body, showed that Court orders alone weren't enough and needed legislative backing. These landmark legislative measures transformed American society by dismantling legal segregation and empowering African Americans to fully participate in the democratic process. While the fight for racial equality continues, these laws represent significant strides towards a more just and equitable nation.

³³ The Civil Rights Act, 1964.

³⁴ The Voting Rights Act, 1965.