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Critical Race Theory: Framework and the Recent Ban in the United States

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ABSTRACT

The Critical Race theory and its omission from the curriculum in schools in the United States has created quite the controversy around the world. The section of people against the theory being taught in schools reason that children are too young to understand a theory as complicated as critical race theory and how the theory as a whole is hypothetical. The theory is presently facing backlash and ban in various states of the US. The theory works on the basis/ foundation of how race is a social construct and is embedded so deeply in the legal systems and policies that it affects the personal lives of people of colour.

This paper will start by defining critical race theory and discussing its tenets/ core components. Secondly, it will look into the history behind the theory and the events that led to its origins. Thirdly, it will look at the states in the US which have banned the theory and the reasons behind the same. Finally, it will look at the section of people who support critical race theory and the reasoning behind it.

Keywords: *Discriminatory, race, racism, civil rights, ban.*

I. INTRODUCTION

Racism as a discriminatory concept has been a part of our society for more than a couple of centuries. The notion of racism works around the prejudicial behaviour projected by the so called 'superior' race (white) onto the 'inferior' race. The term has mostly been associated with abuse, sexual harassment, racial slurs and mental health issues and the horrific proof and statistics of the same has been presented. This racial oppression doesn't stop at the social, economical and personal lives of individuals of colour but also their professional lives. The very structure of racism is used as the basis of the critical race theory.

(A) Analysis:

What is critical race theory?

In order to clear any sort of confusion, the critical race theory works towards trying to disprove the hypothesis of non-existence of racism and colorblindness in our society, while specifically focusing on the United States of America.

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The opposers argue with how the theory exaggerates the status of black people in the US and accuse white people of oppression. However, scholars and academicians have managed to come to the conclusion as to how racism can exist in a society without any participation or existence of racists.

Kendall Thomas, a professor at Columbia Law School describes how the critical race theory maps the nature and working of institutional racism. In simpler terms, the critical race theory just discusses how the legal systems in India, from banking to courtrooms have racism embedded in them to such an extent that rules, regulations, laws, procedures and various aspects of the same turn out to be discriminatory in nature.

(B) Core components:

The tenets are the main principles which support any theory. Critical race theory has been in the picture and development for a long time which has led to many scholars giving their opinion and principles for the same. Due to the same confusion about the tenets are always present.

The following tenets are the ones which are most agreed upon:

1. Normalizing of racism:

- The concept of racism is seen as something to be normal and the majority of most cultures promote meritocracy and colour-blindness. This leads to the white community not feeling responsible for the deprivation faced by the black community and also holding their needs, thoughts and demands as their top priority.

2. The idea of an interest convergence:

- This is the belief that the white community will only support racial progress or justice until and unless they have some sort of advantage for themselves. In simple terms there needs to be some sort of convergence of ideas between the white and the non-white community.

3. The social construction of race

- This has to be one of the core and hallmark issues of critical race theory. This again goes hand in hand with colour blindness and works to the favour and interests of the white community.

4. The idea of storytelling and counter-storytelling

- This component comes from its persuasive ability to unlearn what has been taught to us. Here it refers to how society is taught that racism is a made up concept which is supposed

to be unlearned and relearned as to how it has oppressed the black community for centuries.

5. The notion that whites have actually been recipients of civil rights legislation

- The civil rights legislation or just any law passed in the United States is designed in a way that only benefits the white community due to which the passing of the bills were so easy, as the people in charge were also part of the white community.

II. HISTORY OF THE THEORY

The composition of the theory has been credited to Derrick Bell, Alan Freeman, Kimberlé Crenshaw, Richard Delgado, Cheryl Harris, Charles R. Lawrence III, Mari Matsuda, and Patricia J. Williams. However, of the 8 scholars, Derrick Bell is considered to be the godfather and the genius behind the whole concept.

The impact Derrick Bell had as a professor when he left Harvard Law School in 1980 was commendable which led to his then students (Crenshaw and Matsuda) following his very own footsteps later on in their life. The protest against racism in one of the most prestigious colleges was put up by the very students as the very result of Derrick Bell stepping down. Due to the chaos and violence at the time, 'The New York Times' made a report on the professors teaching at Harvard Law School and of the 60 tenured professors only belonged to the black community.

Derrick Bell also went on to study about racism in the American community while basing his ideas on how racism is a permanent attribute in American life and how the passing of the civil rights legislation in the US was easier because it served the interests of the white people.

One of his students Prof. Matsuda talks about the scholar with high respect, 'He broke open the possibility of bringing Black consciousness to the premiere intellectual battlefields of our profession'. Prof. Crenshaw also expressed how it was the task of the students to rethink the education they were receiving and play an important role in converting the classrooms into egalitarian places and eventually bring that into the bigger picture.

Prof. Crenshaw was later credited with forming the basic academic framework for the theory and held workshops around the country to spread the word during the early years.

III. BAN IN THE UNITED STATES

Of the 50 states in the United States, the theory has received an academic ban in 7 states and the process of the same has been in progress in 16 other states. The list of the states which have banned the theory is as follows: Arkansas, Florida, Idaho, Iowa, New Hampshire, Oklahoma, Tennessee, and the states who are in the banning process are as follows: Georgia, Alabama,

Kentucky, Louisiana, Michigan, Missouri, Montana, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Washington, West Virginia and Wisconsin.

The banning of the theory is obviously supported by the Republicans. Essentially, this ban doesn't authorise discussion, orientation, discussions, lectures or training with relations to oppression, privilege, discrimination and oppression. The schools have also banned literary classics in the library, one of which includes, 'The Bluest Eye' by Toni Morrison, which deals with critical topics like slavery, racism, sexual orientation and gender discrimination.

The legislation passed in most of the states don't explicitly use the words 'critical race theory', except for Idaho and North Dakota, they include the following statement. 'any sex, race, ethnicity, religion, colour, or national origin is inherently superior or inferior'.

The theory came into limelight after then president of the United States, Donald Trump referred to the critical race theory and project 1619 as 'a crusade against American history' and 'ideological poison that will destroy our country'. Before receiving this sort of attention by the entire population of the US, it was left to the discretion of the school boards when it came to inclusivity.

The opposers of the theory are mostly the republicans (supporters of one of the two parties in the United States). Republicans argue how the theory attempts to rewrite America's history from what it originally is. The Republicans believe that even in the past black people haven't been mistreated and have always been subjected to equal opportunities. Another reasoning given by the republicans is how the theory aims at making the white community guilty for the advantages and privileges they receive. Parents of children enrolled in schools have expressed their concern as to how the depth and weightage possessed by the theory will have an effect on the mental health of the children.

Incidents around the country have made it clear that more than half the population is not supportive of the critical race theory being taught or even brought up in any professional working environment. A school in Texas made headlines for trying to get their students to list out the positives of Holocaust in an attempt to teach both sides of the Holocaust. Another incident in Florida which left the parents horrified was a mock slavery auction held in one of the schools.

IV. SUPPORT FOR THE THEORY

Now coming to the segment of people who support the inclusion of the theory in the school curriculum. As discussed above parents are one of the sects of people against the theory,

however, a few of them support the idea of its inclusion in the syllabus. Here it can be argued that people who support its inclusion are from the black community, however even people from the white community have shown their support by turning up at protests and requesting the government to do so.

They believe that banning the same from schools only shields the students from the truth and from what they might face later on in their lives. Although legislation for removal of slavery of black people was passed way back in the 1800s, its implementation was not observed till about 1980s. Slavery is not in existence at the movement; however the discrimination faced by the black community is a direct result of slavery. The white community has never been subjected to any sort of discrimination in what could be called their entire life which leads to them turning a blind eye to the concept as a whole.

Another section of people expressed how the norms imposed on them had led them to believe that the black community were treated as equals and the discrimination was made up by them to gain sympathy. These ideas were instilled in them from a very young age, which obviously stuck with them through their life making them project racist behaviour without any particular reason. Upon realization, they urged the future generations to make themselves aware of the actual truth and not repeat the same mistake as them.

Another aspect to keep in mind is how shielding the students from the past affects how they treat the people around them. Being unaware of their past, who their ancestors were, what were the reasons for the black community oppression can be considered one of the gravest crimes committed in the US.

V. CONCLUSION

In a nutshell, critical race theory can be talked about from the point of view of inclusivity. The black community were not subjected to inclusivity to society from the start of time and the very same thing is being done to them centuries down the lane. The concept of critical race theory is based on facts and evidence and contrary to popular belief racism is not a made up issue in society. Black people have been discriminated against and been subjected to suffrage even till date.

The arguments made by the white community are plainly based on how they do not want to let their future generations be aware of the fact that their ancestors are the sole recipients for the present status of the black community. Here it can be summed up that, the black community were not included back then and the burial of their history amounts to insensitivity.

Coming to how this affects justice and the justice system as a whole. The theory has already pressed on the fact that racism has made its way into the justice/ legal system; however it doesn't stop at just laws and legislations which are clearly discriminatory. The legal profession is highly paid around the world and the same is applicable to lawyers, legal advisors, consultants etc based in the US. The issue arises here due to the fact that the people in charge or behind the achievement of justice are stopped at the very gates of their career, which is mostly universities and in some cases schools. The children of the black community are also subjected to stereotypes and abuse from a very young age which pushed them to drop out of school, hence putting them out of the rat race at the grass root level. Coming to universities, students from the black community are often rejected by their advisors and counsellors leading to wastage of the scholarships which are intended to go to the black community.

To connect justice with the ban of the theory, it can be summed up with how justice was not granted to them back then and now they aren't allowed to be part of achieving the same.

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