CHAPTER III

LAWS RELATING TO
DISABLED PERSONS
IN
INDONESIA, U.K & U.S.A:
A COMPARATIVE STUDY

The study of the jurisprudence of the rights of disabled necessitates the understanding of the domestic legal systems of the different nations. These systems provide us with a ready experience about the provisions of law, their implementation and the difficulties in the implementation. This would help in the recognition of the desired approach towards disability to the countries incorporating the rights of disabled in their legal system subsequently.

In the drafting of the Constitution, India was influenced by the Constitution of different nations. The legislations of different nations are tuned to give expression to the intention of the framers of the respective Constitutions. Therefore it is necessary to study the rights of disabled persons in the domestic legal systems of different nations in order to have a comprehensive understanding. Such a study will help to get an idea of the position of Indian legal system vis-à-vis rights of persons with disability in other countries.

To have a balanced study, the researcher has chosen countries from two different blocks. This division of world is on the basis of economic growth, i.e. developed, developing and underdeveloped countries. Out of these three divisions countries falling under first two categories are considered for the study. The object of the study is to see other legal systems and improve upon our domestic legal system. The researcher has presumed that it is not desirable to imitate the provisions in the under developed countries. This choice is
influenced by another practical difficulty, which is the constraint of time and resource. Therefore, the research has been limited to three countries.

As a part of the study, researcher has taken two countries from the developed block; United States of America (USA) and United Kingdom (UK). It is a natural choice, as the greater part of the Indian legal system is based on these two systems. More importantly, both the nations are considered as pioneers in protecting the rights of the persons with disability. From the developing block, Indonesia has been considered for the study, as the demography, geography and climatic conditions are similar to India. However, political conditions are on same path in the recent times, as it was under dictatorship till the last decade of 20th century.

3.1. Persons with Disability: Legal Regime in Indonesia

Indonesia is an independent republic State of thirty-three provinces. It claimed independence from Dutch in August 17, 1945. Indonesia has a population of 240 million, but one that is geographically divided. As a large archipelagic country consisting of more than 17,500 islands, out of which 6,000 are inhabited and 1,000 are permanent settlements; Indonesia faces distinct problems of enforcement, review, and oversight¹.

The State is run by the Executive, and the President is the head of the Government and the Chief of the State, elected by direct popular vote. Indonesia consists of bicameral legislature called the People’s Consultative

¹ Available at en.wikipedia.org/wiki/Indonesia, visited on 12.12.2010
Assembly (MPR), which includes 560 members of the House of Representatives (DPR), and 132 members of Council of Regional Representatives (DPD). Both are elected for the term of five years. Judiciary is headed by the Supreme Court as the final Court of appeal, and Constitutional Court has power of Judicial Review.

In 1999, the U.N. estimated the percentage of persons with disabilities in Indonesia 5.43 percent of the population, or approximately 12 million persons. The Government put the number at 3 percent, or roughly 7 million persons by classifying the persons with disabilities into four categories; the blind, deaf, mentally disabled, and physically disabled\(^2\).

3.1.1. Rights of disabled under the Constitution

Constitution was adopted in the year 1945. It embodies five principles of the State philosophy, called Pancasila; namely Monotheism, Humanitarianism, National Unity, Representative Democracy by Consensus, and Social Justice.

Constitutional guarantee of religious freedom applies to the six religions recognized by the State; namely Islam (86.1%), Protestantism (5.7%), Catholicism (3%), Hinduism (1.8%), Buddhism (about 1%), and Confucianism (less than 1%). In some remote areas, animism is still practiced; however, Constitutional guarantee does not extend to such practices.

Constitutionally, the State of Indonesia is unstable. It has been trying out different forms of Government. In these attempts, one important stage was of Soeharto administration, which adopted the dictatorial form. During this administration, the protection of human rights was at its lowest.  

The end of the Soeharto administration was accompanied by fundamental changes to the Indonesian political system, and the Constitution was amended in 1999, 2000, 2001, and 2002. One effect of these drastic changes to the Constitution was an extensive emphasis on human rights. Provisions regarding Economic, Social, and Cultural rights, as well as Civil and Political rights, were inserted into the Constitution, and the enactment of human rights laws regulating these provisions soon followed. In addition, many of the Human Rights Covenants previously ratified by Indonesia, became national laws in 2005, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). This development suggests an important aspect about Indonesia, which is unlike India or other European countries where the human rights era is a recent development. Indonesia is keeping its infant steps towards achieving the same. Therefore, consciously we have to keep different yardstick to assess its achievements.

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3Available at http://www.moreorless.au.com/killers/Soeharto.html

Despite these constitutional reforms, after lapse of five to ten years, the social policy in the country as a whole continues to struggle in several crucial aspects. According to the United Nations Development Programme’s 2006 *Human Development Report*, Indonesia’s Human Development Index (HDI) is a middling 0.71 and is ranked 108 out of 177 countries⁵.

The Preamble of the Constitution pledges to improve public welfare, and to educate people and participate towards the establishment of a world order based on freedom, perpetual peace and social justice. Two important aspects of Preamble are ‘Education for all’ and ‘Social Justice to all’. The Preamble also makes a mention about the cooperation with International Community. It can be seen that, broad guidelines and principles are laid down in the Constitution for the purpose of implementation of social order.

The role of the Constitution is paramount as far as protecting the rights of persons with disability are concerned. Same role is impressively played by the Constitution of Indonesia. It has recognized and protected almost all the rights mentioned in the Universal Declaration of Human Rights. Even though, initially the Constitution was not providing sufficient recognition to Human Rights, the legislatures made series of attempts through amendments⁶. As a result, important changes were brought in for addressing the needs of Human Rights. The important rights which were undertaken for study are, right to live

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⁶ The major victory of Human Rights protection came with insertion of human rights concerns in the Constitution during the fourth (and last) amendment to the Constitution in 2002.
in physical and spiritual prosperity, and the right to medical care. The State's endeavor to protect the needy persons is sanctioned by the Constitution. According to the Constitution, every person shall have the right to receive facilitation and special treatment, to have the same opportunity and benefit in order to achieve equality and fairness. This statement is further concretized by stating that every person shall have the right to social security in order to develop oneself fully as a dignified human being.

Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination. This right ensures right to education, which objective is further strengthened by specific provision which mentions the granting of right to education, it being the path to the development.

Right to employment has been also recognized under the Constitution. It states that every person has right to work, equal remuneration and equal treatment at the workplace. It further states that, every person shall have equal opportunity to Government jobs. It also ensures protection against discriminative treatment on any ground whatsoever.

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7 See Article 28 H, Constitution of Indonesia.
8 Id.
9 See Article 28 B.
10 See Article 28 C.
11 See Article 28 D
12 See Article 28 I(2)
Along with these general provisions on Human Rights, the Constitution also provides for an exclusive chapter on education\textsuperscript{13}. This Chapter consists of two articles. These articles make it clear, that the object of education should be to improve spiritual belief, devoutness and moral character,\textsuperscript{14} rather than improving the earning capacity. This is a unique approach, which stresses upon the objective of education. Such a objective makes the acceptance of the persons with disability, easier.

Interestingly, the Chapter on right to education has been extended only to the citizens of Indonesia\textsuperscript{15}. It mentions the obligation on both sides, i.e. where the State is under an obligation to provide basic education to all, through National Education System. At the same time, the citizens are under an obligation to undertake basic education\textsuperscript{16}.

The major step towards realizing the dream of universal education came up by way of an amendment which makes it a Constitutional mandate to keep 20\% of State budget and of the regional budgets, to prioritize in favour of education\textsuperscript{17}. This is a giant leap, considering the budget allocation made to education by

\begin{footnotesize}
\textsuperscript{13} See Chapter XIII
\textsuperscript{14} See Article 31 (3)
\textsuperscript{15} See Article 31 (1)
\textsuperscript{16} See Article 31 (2)
\textsuperscript{17} Article 31 (4); "The State shall prioritize the budget for education to a minimum of 20 percent of the State Budget."
\end{footnotesize}
other developing countries. This forms a major investment towards realizing right to education\textsuperscript{18}.

There is political will to improve education in Indonesia, at least in principle. The Constitutional provision regarding the 20 percent allocation of the State budget for education has been reinforced by Article 49 of Law No. 20 of 2003, concerning the National Education System. The provision states that the 20 percent budget allocation must exclude the salaries of teachers and the Regional Government Training Funds, thereby requiring that more money be delegated overall. In addition, the 20 percent obligation is also applicable for the budget at the provincial and district level. However, based on a study conducted by the Ministry of Finance, the 20 percent ratio can only be achieved after 2009, and even then only on the assumption of 5 percent economic growth and 8 percent growth on education spending per year\textsuperscript{19}.

3.1.2. Legislations and Government Policies for Persons with Disability

The above study shows that the Constitutional and regulatory framework for the rights of disabled are at least in principle, fundamentally sound. Amendments to the Constitution have brought the language of international norms concerning economic, social, and political rights, into Indonesian law and society. These norms were further elaborated in the laws regarding human rights, and in the adoption of the ICESCR into the national law.

\textsuperscript{18} The Chapter on Education has been made comprehensive through the Fourth Amendment to the Constitution of Indonesia.

\textsuperscript{19} Supra note 4
These developments in law are remarkable achievements. However, law has two phases; passing of law and implementation of law. The success of the law depends on the latter phase. Therefore to study the success of law, there is a need to study the ground reality in Indonesia.

The awareness of human rights among the citizens of Indonesia is very poor. According to the Asia Foundation Survey, 56 percent of all respondents were unable to provide a single example of a legally entitled right. Furthermore, of respondents with no formal education, 97 percent were unable to provide a single example of any kind of right. With such poor track record on awareness, the burden of protecting human rights is on the Government alone. Therefore the Government needs to have a paternalistic approach towards the protection of human rights.

The leader of the National Commission for Child Protection (KOMNAS PA) identified the most pressing issues related to the country's youth as: Child labor, child trafficking, child prostitution, street children, children in conflict areas, and undernourished children. Even though, education is compulsory for children up to grade 9, the primary school gets enrollment of 94% of eligible children whereas enrollment drops to 57% in secondary school. The National Child Protection Act, (Law No 23, 2002) addresses the economic and sexual exploitation of children, as well as adoption, guardianship, and other issues. However, these provisions are not implemented seriously. The position of

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21 *Supra note 2.*
elementary education in normal school itself is in dire state. More than 30 percent of the elementary schools are either ruined or in a state of irreversible decay. A large percentage of State elementary schools can no longer be used safely. As a result, all activities in these schools are conducted outside because the Government has failed to allocate the necessary funds to rebuild them.\textsuperscript{22}

In addition, the food security has become a real challenge in Indonesia. Many children grow up in poor health conditions. For example, Central Java Health Authorities announced that in the first 6 months of the year, 44,633 babies were found to be suffering from malnutrition, representing 1 out of every 6 babies in the province. The country's infant mortality rate remained high. According to UNICEF, there were 50 deaths for every 1,000 births during the year. Some health experts attributed the problem to poor service at Public Health Centers.\textsuperscript{23}

In addition to mortality rate, malnutrition can also lead to disability.

Along with food security, education too has been ignored. This can be proved by simple example as to vacancies. The island of Aceh is facing a shortage of 20,000 teachers. Thousands of children have been studying in makeshift schools, mosques, and inside tents.\textsuperscript{24}

When the ground reality of general human rights is in poor state, the state of human rights of persons with disability surely will not be bright. The official statistics of the Government of Indonesia reveals that the country is home to

\textsuperscript{22} Id
\textsuperscript{23} Supra note 21 at 53
\textsuperscript{24} Id
1.3 million children with disabilities. However, the true number of disabled children is believed to be much higher, out of which only 50,000 attended school. The law provides children with disabilities, with the right to education and rehabilitative treatment. However the persons utilizing it are much less.

i. **Right to employment of disabled**

The important law on right to employment of persons with disability is the Minister of Manpower Decree No. Kep-205/Men/1999 which mandates the facility of access to buildings for persons with disabilities. In addition, the law requires that companies which employ over 100 workers should set aside 1 percent of their positions for persons with disabilities. For violating the provisions of the disability law, penalty can be imposed in the form of fine which may extend up to $23,500.

In urban areas, only a few city buses offered wheelchair access, and many of those having hydraulic lifts were vandalized, rendering them unusable, thus posing difficulty for the employed disabled persons.

The right to employment of the persons with disability seems to be in trouble. The employment of persons with disability has remained only law in black letters as the Companies continue to refuse to employ them. In spite of the presence of law and the complaints as to its violation, no official action has been taken against the erring employers.
ii. Right to education of disabled

The basic compulsory education in Indonesia is regulated by the Law on National Education System, which typically covers nine years of schooling. This means that the Government is obligated to ensure that education is readily available for the first nine years of one’s education.

Education in Indonesia is under the control of the Ministry of Education. The Ministry provides general guidelines and standards on education and manages the educational system throughout the country. Direct services however, are delivered by the regional Government.

The Government directly provides education through subsidized State schools, especially in remote areas. State schools are made available in every Kelurahan\(^\text{25}\). There is one State University in almost all provinces in Indonesia. The Government also provides salaries for the teachers of State schools and Universities.

The right to education has faced stiff resistance, mainly from the parents who chose to keep their disabled child at home. Resistance has also come from the schools which refused to accommodate such children, on the grounds that they lacked the resources to do so. According to the Government, there were 700 schools dedicated to educating children with disabilities; all but 41 of them were run privately.

\(^{25}\)Republic of Indonesia is divided into provinces (Provinsi), which are made up of Regencies (Kabupaten) and Cities (Kota). Province, Regencies, and Cities, have their own local Governments and parliamentary bodies. They are the lowest level of administration in the region. The next level is that of the Kelurahan, which are the areas within the sub-district.
The mandate of the Constitution is very clear. Without mincing words, it has also made financial allocation for the protection right to education. The problem lies with the implementation mechanism. If Indonesia is compared with India, even though Indonesia got independence in the year 1945, major portion of the independent status turned out to be a dark period under the iron grip of the dictator Soeharto. During this period, the human rights progress was at its minimal. From the year 2002, Indonesia started taking steps towards protecting human rights. During this short period, the State has made galloping progress. It almost stands on par with India on human rights protection quotient. As far as rights of persons with disability are concerned, they still have to tread a long path.

In spite of the amendment to the Constitution, and the passing of new laws, the track record of the Government in the area of education is not appreciable. The criticism towards the Government’s efforts to increase the quality of education have been were answered by applying “The Reduction of Government Subsidy on Oil Program” of 2005. The Program covers the areas of education, health care, village infrastructure, and the “Direct Cash Subsidy.” For the purpose of education, the Government uses a Scheme called the “School Operational Fund Support” (Bantuan Operasional Sekolah) to support the nine-year period of compulsory schooling. In particular, it provides operational budgets for State schools as well as scholarships for poor students.26

26 Supra note 4.
3.1.3. Judicial approach towards Persons with Disability


The Supreme Court forms the highest Court of the land. This Court is assisted by various Courts like Public Courts, Religious Affairs Courts, Military Tribunals, and State Administrative Courts and a newly created Constitutional Court (Article 24), dealing with different kinds of subject matters of dispute.

In the line of the Indian legal system a National Commission of Human Rights has been established in Indonesia. Even though it has a minimal role, nevertheless it is a remarkable step. One of the most important tasks of the Commission is to provide Human Rights Reports to the police and the Attorney General’s Office for investigation into human rights issue and to the Parliament in public hearings. The Commission does have the authority to examine human rights cases, but the examination report is then presented only as its findings. The Commission does not have judicial powers.

The period between 1945 to 1966 during the Soekarno presidency, the first presidency of the newly independent Indonesia, was the darkest period of Indonesian judiciary which was plagued with corruption.27

In the years following Indonesian independence, the judges were increasingly seen as "instruments of revolution."28 In line with this conception of the role of

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the judiciary, the President was formally granted far-reaching powers, which helped him to have influence over the judicial system. According to scholars of the Indonesian judiciary, this cooptation of the judiciary by the Soekarno administration began what would become a tradition of corruption within the Indonesian judiciary.

Even though the judiciary is not as independent and as powerful as Indian judiciary and in spite of being plagued by corruption, it has played a significant role in its own way. The numbers of cases approaching the Court are minimal. In these minimal cases, the Court has exhibited its inclination towards protection of Human Rights.

When National Social Security Scheme was introduced, the Central Government prohibited the Local Government from continuing with their own Social Security Schemes. The Court held that the definition of "State" given in Article 18 of the Constitution covered both; the Central and Local Governments. Therefore, providing Social Security cannot be reserved exclusively to the Central Government. The Constitutional Court indeed held that the provision of Social Security Schemes was one of the social functions of the State (made up of both the Central and Local Governments). Thus, it was not only the Central Government that had the power to initiate Social Security Schemes, but also the Local Governments. Accordingly, it was held that the Central Government, through the National Social Security System Law, had no

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28 Supra note 4.

right to prohibit Local Governments from providing Social Security to its citizens. As mentioned above, the strength of Judiciary and corruption in judiciary has attracted much less number of cases from the citizens. The research has discovered only five cases related to the right to education in Indonesia. Two can be broadly categorized as cases concerning school choice, especially with regard to the expulsion and attendance of students at particular schools. As for the other three cases, they involve judicial review of the National Educational System Law and are related to claims for public financing and provision of education. No cases involving regulation rights of persons with disability were found.

The petitioners challenged the constitutionality of two provisions in the National Education System Law (No. 20 of 2003), which divides education into two stages: Basic Education and Advanced Education. It further qualifies the schools which are included in each type of education. Whereas the Government declared the required measures for basic education, providing measures only to basic education would violate the Constitutional principle of providing the best education possible to all Indonesian people. This particular challenge to Article 17 was ultimately rejected by the Court. As the Constitutional duty is to provide only basic education, the act of the

30 Judicial Review of the National Social Security System Law in the Constitutional Court by East Java Legislative Council; Case No. 007/PUU-III/2005
Government of dividing the schools into two categories and implementing the schemes only for one of the categories, is valid\textsuperscript{31}.

The petitioners also challenged the constitutionality of the National Education System Law, which states that the Government must allocate 20 percent of the national budget to the education sector. However, the provision further explains that the allocation may be done gradually.

This provision was said to be in contradiction to Article 31, Section (4) of the Constitution, which provides for allocation of 20\% from the immediate next financial year. However, the Government tried to allocate the fund stage wise. Under the first interpretation, the Government had allocated only 7 percent of the budget to the education sector in the State Budget of 2005.

The Constitutional Court took the view that the obligation of the Government as required by the Constitution could not be deferred. In other words, the Constitutional Court ruled that the money stipulated for the education budget could not be given gradually. According to the interpretation of the Court, the Constitution expressly required that a minimum of 20 percent of the National and Provincial Budgets be devoted to education. As per this observation, the National Education System Law’s new norm was in conflict with the Constitution. Furthermore, the education sector in Indonesia had long been neglected. As a result, the Court ruled that it was time that education is elevated to a major priority in the development of Indonesia. For this to be realized, the

\textsuperscript{31} Judicial Review of the National Education System Law in the Constitutional Court; Case No. 011/PUU-III/2005
educational sector would need to be a priority in terms of funding. On the same ground, the State Budget was challenged and Court asked to make necessary changes in the State Budget. The Constitutional Court ruled that the State has an obligation to act towards fulfilling the rights of the citizens to receive education. Accordingly, if the Budget Law fails to allocate a minimum of 20 percent for education, then it will be in violation of the Constitution. The Constitutional Court further recognized the good faith of the Government and the House of Representatives in planning to gradually increase the budgetary funding of education over a number of years.

However, if the reasoning of the ruling is read from the human rights perspective, the right to education is included in economic, social, and cultural rights. It is inalienable obligation of the State to respect and fulfill the economic, social, and cultural rights of every citizen. The obligation of the State in terms of “obligation to achieve” is fulfilled, when the State with good faith has utilized the maximum available resources and has performed towards progressive realization.

The petitioners in this case included the members of the Association of Teachers, the Association of Educational Science Graduates, and Nurani Dunia, a Foundation working on the enhancement of the quality of education for Indonesian citizens. The petitioners requested the Constitutional Court to

32 id
33 Judicial Review of the 2005 State Budget Law; Case No. 012/PUU-III/2005
34 id
rule that the 2006 State Budget Law contravenes the Constitution as it only allocated 9.1 percent of funds for education, and is therefore null and void\textsuperscript{35}.

Although this case is similar to the previous cases addressing this issue, the significance of this case is that the State could not make required allocation in spite of the mandate of the Constitution and order of the Court.

However, the petitioners made the argument stronger by adding the fact that the Government and the Parliament should have been aware of the opinion of the Constitutional Court in the judicial review of the previous year's State Budget. Therefore, the Government and the Parliament have not demonstrated a good-faith effort, by failing to comply with the 20 percent allocation obligation.

The Constitutional Court confirmed the interpretation of the plaintiffs and made a stronger ruling in terms of the law. The implication was that the State Budget as a whole was deemed effective and applicable, with a condition that during the midyear adjustment of the State budget, the Government and Parliament have to allocate additional expenditures to education.

In addition, the Constitutional Court's decision effectively provided a guideline for future cases, by ruling that as long as the budget allocation for education has not reached 20 percent; the State Budget is always in violation of the Constitution.

\textsuperscript{35}Judicial Review of the 2006 State Budget Law; Case No. 026/PUU-III/2006
As a result of the decision, the State Budget of 2008 included an increase in education spending to 11.8 percent of the budget. This increase in the allocation for education suggests improvement in the last four years, from 6.6 percent in 2004, 7 percent in 2005, 8.1 percent in 2006, 9.1 percent in 2007, and 11.8 percent in 2008. The Constitutional mandate has been made into reality at the space of three years. This leap and bounce in allocation of funds to the education sector is a feat probably not achieved anywhere else in the world.

Indonesia is a nation which is taking a leap into the arena of Human Rights. At the general look, the State seems to have achieved its Constitutional objective. There are series of attempts made by the legislature to improve the right to education and employment of the population in general. The normative study seems to be satisfactory with a series of legislations. However, the disabled are not the direct beneficiaries, though they indirectly receive benefits due the general developmental policy.

The attempt by the legislature is remarkable compared to other developed nations as well as India. The genuine attempts can be seen through the legislation which has allotted 20% of GDP for education and specifically mentioned not to spend such money on salaries. Therefore the burden is on executive to spend money in a constructive manner and make education, a reality. Such attempts are absent from the legislations of other nations. Spending such a large sum on something which is intangible shows the dedication for building up the nation.
Therefore, it is observed that, even though the present scenario in Indonesia is not very encouraging. The situation may not remain same. It will change for better, if same commitment is continued by the legislature as well as executive.

3.2. Persons with Disability: Legal Regime in United Kingdom

United Kingdom (UK) has been in the forefront in protecting human rights. The Magna Carta has been the greatest contribution of UK to the world. From the time of Bill of Rights, it has been the leader in recognizing and protecting the human rights of the individuals.

This endeavor has been facilitated by the new development in the region, of forming the European Union. The Union has been formed due to economic reasons, but it has positive impact on most of the other aspects, including human rights in general and rights of persons with disability in particular. European Convention on Human Rights (ECHR) is exerting a powerful influence after its effective entrenchment in 2000. This however, owed much to the civil and political complexion of the Convention and most particularly the existence of a directly accessible Court that handed down binding judgments. The European Convention has effectively integrated the rights arising in large measure by virtue of status.

3.2.1. Legislations and Government Policy Concerning Disabled Persons

The attempts of UK Government to protect the rights of persons with disability got more thrust with the formation of the European Union and its Charter on
Human Rights. All these developments have been represented in the form of Legislations.

i. Disability Discrimination Act, 1995 (DDA)

The Act was passed with an object of providing equality in employment, goods, facilities and services as well as education\(^{36}\). To provide such equality, the Act approaches the problem with two objectives; to avoid discrimination\(^{37}\), and harassment\(^{38}\).

‘Discrimination’ according to the Act, includes treating a person less favourably in comparison with others, without justification\(^{39}\). The definition gets further broadened by introducing new concept called ‘reasonable adjustments’. Here even a person refusing to make a reasonable adjustment is guilty of discrimination\(^{40}\).

The Concept of Harassment is evolved to protect the confidence of the persons with disability. It is entirely different from discrimination. In case of ‘discrimination’, the objective is to provide equal treatment in all aspects. Once the right is protected, the need arises to empower the persons with disability to

\(^{36}\) Preamble of the Act reads as “An Act to make it unlawful to discriminate against disabled persons in connection with employment, the provision of goods, facilities and services or the disposal or management of premises; to make provision about the employment of disabled persons; and to establish a National Disability Council”.

\(^{37}\) See S. 3A

\(^{38}\) See S. 3B

\(^{39}\) Justification is considered only if the reason provided is material and substantial, see Sec 3A (3)

\(^{40}\) Supra note 37
realize these rights. While ensuring the realization of these rights, persons with
disability may face a new challenge in the form of ‘harassment’.

Harassment is a form of behavior, where a person engages himself in unwanted
conduct for violating dignity of persons with disability, and creating
intimidating, hostile, degrading, humiliating or offensive atmosphere. The test
to assess the injury is not by considering the regular yardstick, but by
considering the perception of the person with disability."41.

Right to Employment of disabled: Protection to persons with disability at
workplace can be studied under two headings; protection at the time of hiring,
and during employment.

At the time of hiring, no discrimination should be meted out while determining
whom to employ, terms of employment and refusing to offer, or deliberately
not offering employment.

During employment, it amounts to discrimination if opportunities for
promotion, transfer or training are deliberately not given or in case of any other
detriment including dismissal. Therefore, the law protects both; the employed
disabled person as well as an applicant.

Reasonable adjustments: When any physical feature of premises occupied by
employer puts the disabled person at a substantial disadvantage in comparison
with persons who are not disabled, then it is the duty of the employer to make
reasonable adjustments to prevent such disadvantages.

41 Supra note 38
When arguing Archibald v. Fife\textsuperscript{42}, the first case on reasonable accommodation to come before the House of Lords, it was pointed out that; ‘The duty to make reasonable adjustments is not blind to the disability that a person suffers, but is a requirement to address the consequent disadvantage which resulted from that disability, in a specific context so as to eliminate that disadvantage’. In this respect the DDA addresses what has been described by jurists as \textit{equality of outcome}.

Thus its principal concern is the \textit{inclusion} into the ordinary world of work. In the world of employment the person working without assistance is preferred over the worker with assistance. In that sense, reasonable adjustment is the duty created to provide a disabled person the opportunity for employment which is more favorable than that of other person. Therefore, the legislation recognizes that without such treatment the disabled persons would be at an impossible disadvantage in securing the inclusion into society appropriate to their human dignity\textsuperscript{43}.

This approach fully accords with the general principles set out in the Declaration of the Rights of Disabled Persons 1975, adopted by the General Assembly of the United Nations: \textsuperscript{44} In particular Articles 5, 6, 7, and 8, and also

\textsuperscript{42}136 I C R 954, [2004] UKHL 32
International Labour Organization Convention 159, Vocational Rehabilitation and Employment (Disabled Persons) Convention 1983\textsuperscript{45}.

The Act provides for complete protection to the persons with disability. The scope of the Act, includes contract workers, office-holders, partnership firms, solicitor firms, and also extends to Occupational Pension Schemes.

\textit{ii. Right to Education}\textsuperscript{46}

Education is other important area covered by the Act. The Act requires every school to abide by the rules and avoid discrimination against the children. As every school is included in the endeavor of protecting the right to education of disabled pupil, the State is careful while imposing duties on schools. The State expects minimum contribution from the schools. Major contribution is made by the State\textsuperscript{47}.

The law imposes important duties upon the responsible bodies of schools. The duty is, to not discriminate at the time of determining the admission to schools, no discrimination on terms of offer, no refusing or deliberately omitting to accept an application for admission, or to discriminate against a disabled pupil in the education or associated services\textsuperscript{48}.

\textsuperscript{45} See Articles 1(2), and 4. See also ILO Recommendation R99, Vocational Rehabilitation (Disabled) Recommendation 1955, and ILO Recommendation 150, Human Resources Development Recommendation 1975.

\textsuperscript{46} Right to Education of Pupil with Disability is discussed under Part 4 of the Act.

\textsuperscript{47} See S. 28D.

\textsuperscript{48} The list of associated service is prepared by Secretary of State
It is discrimination, if a disabled pupil be excluded from the school, whether permanent or temporarily.\footnote{Supra n. 46, See S. 28A}

'Non-Discrimination' and 'Accommodation': For the purposes of section 28A, if a responsible body discriminates against a disabled person, by treating disabled pupil less favourably than they would treat others; such a treatment can never be justified under the law. Here the law shows concern to the mental agony of the child, when it is discriminated\footnote{See S. 28B}. However, the law provides only one justification i.e. mistake of fact. If responsible body were not aware about the disability of the pupil under ordinary course of business, such discrimination can be excused, if the authority takes up immediate corrective actions\footnote{See S. 28B (4)}.

Along with negative duty of not to discriminate, the law imposes positive duties on the responsible bodies of schools. It mandates that such a positive duty has to be fulfilled; otherwise it will be treated as discrimination. Therefore, school is not only under the negative duty of not to discriminate, it is also under positive duty of providing reasonable accommodation to enable the disabled children.

It is also under the duty not to create a situation where disable pupil is put in a substantially disadvantaged position, in comparison with other pupil. The demand from the law is not unreasonable, as it only asks for reasonable

\footnote{Supra n. 46, See S. 28A}
\footnote{See S. 28B}
\footnote{See S. 28B (4)}
accommodation. It also further clarifies that such reasonable accommodation does not include, structural changes. Therefore, reasonable accommodation has been given very restricted meaning\textsuperscript{52}.

Along with schools, the duty to provide access to education is imposed on the Local Education Authorities also. Here the education authorities are expected to implement accessibility strategy. These strategies include plans to increase the participation of pupil with disability, as well as improving physical environment of the school to make it disabled friendly\textsuperscript{53}. While converting the building in to disabled friendly building, the modification can be carried out only after obtaining permission from the owner (if the building is leased to educational institution). The lessor is under the duty to grant permission. If necessary, reasonable conditions can be imposed while making such changes\textsuperscript{54}. State has to allocate sufficient funds to implement these strategies\textsuperscript{55}. Along with these duties on schools, the Act goes a step further and imposes a duty on the Education Department not to discriminate, and not to allow any discrimination with in the schools\textsuperscript{56}.

Special Educational Needs and Disability Tribunal\textsuperscript{57} A special Tribunal is constituted under the Act, with an exclusive jurisdiction regarding Part 4 of the Act. It has the right to hear the matter brought before it by pupil with disability

\textsuperscript{52} See S. 28C
\textsuperscript{53} See S. 28D
\textsuperscript{54} See S. 28W
\textsuperscript{55} See S. 28E
\textsuperscript{56} See S. 25F
\textsuperscript{57} Established under S. 28H
or parents of the pupil. The dispute may be related to any matter arising out of
the rights provided under Part 4. The Tribunal is empowered to pass any order
as to mitigate the discrimination against the pupil. But it cannot award
compensation for the victims. Therefore, it can take up matters against the
responsible bodies of the schools only.

The Tribunal is expected to follow an elaborate procedure. This procedure
includes administration of oath, transfer of cases, hearing on jurisdiction,
power to conduct ex parte hearing, admission of claims, etc. Therefore, it can
be inferred that the Act has granted the powers of Civil Court to the Tribunal,
to conduct cases. However, when it comes to passing of an order, the power of
Tribunal has been substantially curtailed.

Higher Education: Higher education in UK is privatized and the State does
not provide any kind of subsidy for it. Compared to primary education, the
higher education stands at a lower footing as it cannot be equated to
fundamental right or human rights. Therefore the protection granted by the Act
for higher education of persons with disability, is remarkable. This shows the
proactive role taken by the State in protecting the rights of the disabled.

The initial protections granted to the persons with disability are identical to the
protection given to the primary education. Therefore, there cannot be any
discrimination at the time of admissions, which include rejecting application

58 See S. 28 I (4)
59 See S. 28 J.
60 Id
61 Chapter 2 under Part 4 deals with ‘Higher Education and Rights of Persons with Disability.’
for the reason of disability, to terms of admissions. Protection extends to other allied services also.

However, the responsible body of an educational institution is expected to bring in equality while making arrangements for the purpose of determining, upon whom to confer a qualification, or the terms on which it is prepared to confer a qualification. It amounts to discrimination, if refusing or deliberately omitting to grant or withdrawing qualification is done on the ground of disability. The protection extends against harassment in higher education.

The law relating to discrimination in higher education had little relevance in the early years. However, due to the passing of the Equality Law of 2006, the right to higher education has become equivalent to right to education. It is a remarkable development that is seen in the legal system of UK, where the people facing special challenges are empowered to the extent that, they have no regrets to mention.

3.2.2. Judicial Approach Concerning Rights of Disabled Persons

UK has a well developed judicial system which has been in the forefront for protection of human rights. It has especially made important contributions to the development of jurisprudence of disabled rights.

62 See S. 28R (3A), This section was inserted through an Amendment made by Statutory Instrument 2006/1721 to The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006.

63 See S. 28 R (3B)
Gunter v. S W Staffordshire P C T (2005)\(^{64}\) concerned a disabled person who wished to remain in her own home rather than being placed in an institutional setting by the local NHS Primary Care Trust. Collins J. considered that these considerations engaged in Article 8 of the European Convention on Human Rights had to be given considerable weight. In respect of the PCT’s argument that it would be less expensive to provide the care in an institutional setting, the Judge referred to this as an obvious interference with family life and observed:

I do not regard evidence of what benefits could accrue from the expenditure of sums which could be saved in providing a less costly package for Rachel as helpful. It is obvious that Health Authorities never have enough money to provide the level of services which would be ideal, but that cannot mean that someone such as Rachel should receive care which does not properly meet her needs\(^{65}\)

Similarly, in Price v. U K\(^{66}\), a case concerning a disabled person’s treatment in prison, the Court commented that the petitioner is different from other people to the extent that treating her like others is not only discrimination, but brings

\(^{64}\) [2005] E W H C 1894 (Admin) 26/08/05; (2005) 86 B M L R 60

\(^{65}\) Id

\(^{66}\) (2002) 34 E H R R 1285
about a violation of Article 3 ... she has to be treated differently from other people because her situation is significantly different.\footnote{Id, pg 1296.}

This kind of reasoning is similar to the Canadian jurisprudence and it also underpins the approach taken in the United Kingdom to disability discrimination. If a disabled person is treated as being in a comparable situation with another person who does not suffer from the same disability, it is likely that the disability will operate to materially affect them, and so, to undermine the equality and human dignity.\footnote{Gay Moon and Robin Allen Qc 'Dignity Discourse In Discrimination Law: A Better Route To Equality?' available at http://www.justice.org.uk/images/pdfs/dignityfinal.pdf}

Similarly in \textit{Clark v. Novacold Ltd}, the Court held that in case of rights of persons with disability, the approach to the proper treatment of a disabled person is like the approach to the proper treatment of a pregnant woman. It is not a matter of drawing a hypothetical comparison but seeing the whole person for whom and what they are.\footnote{[1999] I.C.R 951 at 963. See also \textit{Webb v. Emo Air Cargo (U.K.) Ltd. (Case C-32/93)} [1994] I.C.R. 770, 798-799, para 24-29}

Even though, the State has taken many remarkable steps towards realizing the rights of disabled person, many of the previous poor law assumptions and prejudices have found their way into the current legislative framework. The rights are expected to be implemented in a system with an institutional mindset...
and one that talks of careers in the language of 'liable relatives'. Better implementation is a must.

United Kingdom is the oldest proponent of human rights. The level of protection of rights of persons with disability, is remarkable. Being a developed country and having a rich historical background, it has been a leader in the area of human rights of the persons with disability.

The United Kingdom received additional thrust due to the formation of European Union. This formation brought all the European Nations under a single banner, and in addition it created a platform for human rights by passing the European Charter on Human Rights.

Therefore, it can be said that highest level of protection is being given to the rights of persons with disability. It has gained more prominence due to the involvement of judiciary as well as the Human Rights Court of European Union.

3.3. Persons with Disability: Legal Regime in the United States of America

USA is one of the pioneers in the protection of rights of persons with disability. The approach of the State is undeniably holistic and complete. The approach is such that it leads to an independent life of persons with disability. The word 'disabled' is rendered meaningless. This country stands as an example for the

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protection of rights of persons with disability. The phenomenon of protection of rights is not recent. It has been a part of US legal system since 1968.\textsuperscript{71}

The most impressive point is that the desired protection is granted to cover all aspects like housing, education, employment, etc. The protection is extended from accessibility to public buildings, to air carriers, access to education, to barrier free environment in all buildings, protection of employment in public sector and to private sector.

3.3.1. Legislations Concerning Persons with Disability

US is one of the few countries which has come up with exclusive legislations on rights of persons with disability. The concern of the legislature is expressed through variety of Acts on disabled rights.

\textit{i. Americans with Disability Act, 1990}\textsuperscript{72}

The Americans with Disabilities Act ("ADA") was signed by President Bush on July 26, 1990, but did not become effective until two years later. During these two years, and even during the years preceding the passage of the Act, the entire country was generally aware of the prevailing trend of seeking reform in the area of anti-discrimination laws.


\textsuperscript{72}42 U.S.C. § 12101 (1990)
In the area of disability law, the Rehabilitation Act of 1973 had already been in place for years. The operative section of the Act prohibits discrimination based on a disability by any program or activity that receives federal financial assistance. Although the reach of the Act is broad, in the sense many entities receive federal funding; the Congress apparently thought that the coverage was not broad enough. So in 1990, the Congress decided to respond to the pleas of some forty-three million Americans who had one or more physical or mental disability and who had historically been isolated by the society, by passing the ADA.

It is one of the most comprehensive laws passed by the USA. The advantage of the law, being that its applicability is extended to United States Congress. The main objective of ADA is to prohibit discrimination on the basis of disability in employment in State and Local Government, public accommodations, commercial facilities, transportation, and telecommunications.

The ADA is composed of five separate titles; each addressing a different area of disability discrimination. Title I, the ‘Employment’ title, specifies that a covered entity may not discriminate against a qualified individual with a disability in any term, condition or privilege of employment.

The rule of non-discrimination not only applies to public sector, it has also been extended to private sector employers with 15 or more employees. They are under a duty to provide qualified individuals with disabilities, an equal

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opportunity to benefit from the full range of employment-related opportunities available to others. For example, it prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment. It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship. This Act extends to religious entities with 15 or more employees.

Title II makes the 'Prohibition against discrimination on the basis of disability' applicable to all programs, activities and services provided by public entities and essentially extends the scope of § 504 of the Act beyond entities receiving federal funding. Title III extends the 'Prohibition to all privately owned public accommodations', as defined in the Act, such as movie theaters, restaurants, and museums. Title IV deals with 'Telecommunications' and Title V contains 'Miscellaneous' provisions.

Along with rights, the Act has also provided a complete mechanism to implement these rights. The dispute relating to the Act can be raised at three different levels. Initially the dispute can be raised with special authority created for the purpose of protecting the rights of the persons with disability; 'the U. S. Equal Employment Opportunity Commission (EEOC)'. Along with this special agency, the Act has also empowered another agency; 'State or Local Fair Employment Practice Agency'. In addition to this, the individuals may file a lawsuit in Federal Court after they receive a "right-to-sue" letter from the
EEOC. Charges of employment discrimination on the basis of disability may be filed at any U.S. Equal Employment Opportunity Commission Field Office. Field Offices are located in 50 cities throughout the U.S.

**ii. Rehabilitation Act 1973**

The Act defines "individual with a disability" as "any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment." The Rehabilitation Act prohibits discrimination on the basis of disability in activities undertaken by Federal Agencies or activities receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors.

Section 501 requires affirmative action and non-discrimination in employment by Federal Agencies of the Executive Branch. Any discrimination in this regard, can be raised before Equal Employment Opportunity Office.

Section 503 requires affirmative action and prohibits employment discrimination by Federal Government contractors and subcontractors with contracts of more than $10,000.

Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, or denied the benefits of, or be subjected to

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74 Supra note. 74.

discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.

Each Federal agency has its own set of section 504 regulations that apply to its own programs. Agencies that provide Federal financial assistance also have section 504 regulations covering entities that receive Federal aid. Requirements common to these regulations include reasonable accommodation for employees with disabilities; program accessibility; effective communication with people who have hearing or vision disabilities; and accessible new construction and alterations. Each agency is responsible for enforcing its own regulations. Section 504 may also be enforced through private lawsuits. It is not necessary to file a complaint with a Federal agency or to receive a "right-to-sue" letter before going to Court.

Section 508 establishes the need for electronic and information technology to be developed, maintained, procured, or used by the Federal Government. Section 508 requires Federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public.

**iii. Individuals with Disabilities Education Act, 2004**

The Individuals with Disabilities Education Act (IDEA) was an improvement over the Education for all Handicapped Children Act of 1975. The IDEA

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76 (20 U.S.C. §§ 1400 et seq.)
requires public schools to make available to all eligible children with disabilities, a free appropriate public education in the least restrictive environment appropriate to their individual needs.

IDEA requires public school systems to develop appropriate Individualized Education Programs (IEP's) for each child. The specific special education and related services outlined in each IEP reflect the individualized needs of each student.

IDEA also mandates that particular procedures be followed in the development of the IEP. Each student's IEP must be developed by a team of knowledgeable persons and must be at least reviewed annually. The team includes the child's teacher; the parents; subject to certain limited exceptions, the child; if determined appropriate, an agency representative who is qualified to provide or supervise the provision of special education; and other individuals at the parents' or agency's discretion.

If parents disagree with the proposed IEP, they can request a due process hearing and a review from the State Educational Agency if applicable in that State. They also can appeal the State Agency's decision to State or Federal Court.
3.3.2. Judicial Response to Rights of Person with Disability

In the year 1927 in *Buck v. Bell*, the Supreme Court upheld a Virginia law that mandated sterilization for people with mental retardation\(^77\). The Court reasoned that "three generations of imbeciles were enough." They claimed that Virginia had to protect itself from people with mental retardation by controlling their procreation. From this outlook of the Judiciary to the present day, there has been a remarkable change. The Supreme Court ruled that unnecessary institutionalization of people with mental disabilities was indeed discrimination based on disability\(^78\). However, the graph of change seems to be taking dipping curve as present decisions are inclining back to isolation of persons with disability rather than integration.

In the initial years since 1954, the Supreme Court has protected the civil rights. In that year, the Court found segregation in public schools to be unconstitutional under the Fourteenth Amendment\(^79\). This ruling marked the first substantive action by the Federal Government to address racial inequality. Therefore, the struggle against racial discrimination was initiated by Supreme Court and followed by Congress, when it supported the cause by enacting the Civil Rights Act of 1964. However, same sensitivity was not exercised with regard to disability rights.

By passing of Civil Rights Act of 1964, the Congress had to recognize the

\(^77\) 274 U.S. 200 (1927)
\(^78\) 527 U.S. 581 (1999)
existence of negative rights, i.e. right not to be discriminated. The same cannot be applied in case of right of persons with disability. When Americans with Disability Act was passed, it demanded for affirmative rights. Unlike the Civil Rights Act of 1964, the ADA forces public and private entities to perform affirmative action’s such as, making their buildings fully accessible to people with mobility impairments.

The reasonable accommodation provisions in the ADA are protections for positive rights. Positive rights are rights to receive specific benefits from other members of society and are distinct from negative rights in that the latter simply protect individuals from some sort of invasion by others. Traditionally, our society has respected negative rights. However, such programs as affirmative action and welfare have recently provided protection for positive rights.

Henry Shue lays out the importance of positive rights and also mentions that some of them are important and require protection alongside negative rights, which are known as "basic rights". These are such rights, in absence of which, people would not enjoy most of the other rights in society, even if they can assert them verbally. Therefore "rights are basic in the sense used here only if enjoyment of them is essential to the enjoyment of all other rights." Thus it is argued that societal rights (like freedom of association) cannot be enjoyed

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without these basic rights.

Before passing of legislations on rights of persons with disability, the Supreme Court was holding the fort for persons with disability. However, prior to the ADA, protection extended by the Supreme Court to the Constitutional rights of the disabled was to a limited extent. The protection was only for Constitutional violations on ad hoc basis. However, the judgment prior to ADA shows that the Court agreed for "the presence of society-wide discrimination against persons with disabilities and State culpability." In the 1985 case of Alexander v. Choate, the Court "acknowledged for the first time the 'well-cataloged instances of invidious discrimination against the handicapped.' The Court's reach however, was limited to individual cases and controversies.

The principles of law that developed and the study of societal situation, resulted in an important observation inter alia, that isolation and segregation of persons with disabilities 'continue to be a serious and pervasive problem', and that 'the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities, the opportunity to compete on an equal basis. Therefore, the Congress passed the ADA under Section 5 of the Fourteenth Amendment in order to address the treatment of people with disabilities, based on the legal principle of balancing test. This test requires States to provide reasonable accommodations to people with disabilities to

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83469 U.S. 287 (1985)
84 Ibid.
ensure that they have equal access to the community.

The Courts have held that the ADA is a civil rights law meant to ensure the Constitutional rights of people with disabilities, which covers both private and public sectors. It makes provision for people with disabilities to allow them access to services and facilities otherwise unavailable. Public entities, such as States, must provide accommodations, including "making existing facilities used by employees readily accessible to and usable by individuals with disabilities," and providing "qualified readers or interpreters, and other similar accommodations for individuals with disabilities."

The main purpose of ADA is to improve the civil rights of disabled individuals granted by Section 504 of the Rehabilitation Act of 1973. The Congress recognized that Section 504 did not give these individuals the type of equality afforded to other minorities like African Americans. It simply covered entities that received federal funds. Congress used the Fourteenth Amendment and the Commerce Clause of the United States Constitution to extend the scope and application of its disability rights legislation to State and Local Governments.

Under Title I of the ADA, an employer must provide "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose

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87 Ibid.
undue hardship on the operation of the business." Congress presumably established this balancing test to protect all employers from unreasonable financial burdens. In fact, the ADA defines "undue hardship" as "an action requiring significant difficulty or expense."

However, many felt that the Federal Government action is too late and too little. This became a major argument against the constitutionality of the Act. It was contended that forty-five States are already having similar laws to the ADA before its passage. Therefore it was argued that it was an unnecessary action of Congress.

In *Garrett v. University of Alabama*, the ADA was questioned and the Supreme Court ruled that Congress cannot require States to provide reasonable accommodations to their disabled employees, even if the States have previously discriminated against disabled individuals in the employment context. In Garrett, the Court ruled that Congress did not properly abrogate the States' Eleventh Amendment 'Sovereign Immunity' by enacting Title I of the Americans with Disabilities Act (ADA), because reasonable accommodations are not a proper remedy for Constitutional violations. The Court, in effect suggested that States do not have any Constitutional obligation to provide equal access to education, employment, and community services to

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90 531 U.S. 356 (2001)

91 id at 373

92 id
individuals with disabilities. In addition the Court did not find any substantial historical evidence of unconstitutional employment discrimination by the States against people with disabilities. As the Court stated, "[t]he legislative record of the ADA, however, simply fails to show that Congress did in fact identify a pattern of irrational State discrimination in employment against the disabled." Although the legislative record cited examples of such discrimination, the Court found those examples insufficient to support claims of Constitutional violations. Thus, the Court scrutinized the finding of facts behind the ADA, as well as the Constitutionality of the law itself.

Then as a major blow to the right to employment of persons with disability, the Court reasoned that a State's refusal to accommodate employees with disabilities and using disability as a factor in the hiring process cannot run against the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate Governmental purpose. The majority further reasoned that "whereas it would be entirely rational (and therefore Constitutional) for a State employer to conserve scarce financial resources by hiring employees who are able to use existing facilities, the ADA requires employers to 'make existing facilities used by employees readily accessible to and usable by individuals with disabilities."

93 Supra note 90
95 Id at 369-370
Finally the Court took the view that reasonable accommodations are not the constitutional right of people with disabilities. Rather, it viewed accommodations as privileges to be granted by legislatures. The Court asserted that "if special accommodations for the disabled are to be required, they have to come from positive law and not through the Equal Protection Clause." Therefore the Court held that the individuals with disabilities cannot recover monetary damages for the State's failure to reasonably accommodate them. The Court ruled that States had no Constitutional obligation to provide reasonable accommodations.

3.4. Comparative Analysis

The comparative study of the different nations reveals that the position of India is very precarious, where a lot needs to be done.

Indonesia cannot be classified as a leading developing country like India. The Human Rights era is a recent phenomenon in Indonesia, unlike India where it has been part of the legal system from the date of adopting of the Constitution. Geographically, India is blessed as compared to Indonesia, where it is made up of archipelagic islands. In spite of all these differences, it does not lag much behind as far as right to education is concerned. The nature of legislations is such that, they are capable of achieving the objective. The same cannot be said about India. The comparison again may be challengeable, due to the ample knowledge that the researcher has about in India, and the lack of awareness as

97 531 U.S. 356 (2001) at 373
98 Id at 367
to position in Indonesia. However, it is submitted that Indonesia is a nation, which is making galloping progress in the area of human rights.

Similarly, the position in USA and UK is far different from India and Indonesia. India has been providing for opportunity for improvement and Indonesia projects a will for improvement, whereas, USA and UK provides a benchmark which all the nations must strive to achieve.

USA being cradle for the rights of persons with disability, and land of many movements, it continues to be a pioneer in protecting the rights of persons with disability. The difference between the nations is so huge that, it will take generations to bridge the gap. The major difference between these nations is the attitude and approach. The developed nations have successfully achieved social acceptance and consider the welfare projects as their rights, whereas in developing nations, social acceptance is a major hurdle and welfare projects are considered as charities.

The next chapter deals with the comprehensive study of the legislations and policy of Government of India regarding the rights of persons with disability.