



Right of Accessibility of Visually Impaired under Indian Copyright Law-A Critical Study

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Abstract: Persons with a print disability either blind or visually impaired have the same need to have access to all kinds of information as everyone else for their social inclusion. The Availability, accessibility and usability of information resources and services are the three major factors of social inclusion. These three factors of social inclusion are restricted by national copyright laws. As the reproduction of copyrighted material in formats that are accessible to blind and visually impaired persons constitutes a copyright infringement unless there are some specific limitations and exceptions in the national copyright laws. In world, most of countries do not have specific limitations and exceptions in their copyright laws for benefit and welfare of visually impaired. India also constitute the major population of blind and visually impaired of world, so to bring them in social inclusion necessary steps and measures to be taken by amending pre-existing statutory laws and bye-laws. The present paper critically analyse the right of accessibility of copyrighted materials of visually impaired under Indian Copyright Law.

Index Terms – Visually impaired, Right of accessibility, Copyright.

I. INTRODUCTION

Access to information is critical to human existence, human development and their quality of life. It is so fundamentally important that it is accepted as a basic human right internationally and has been entrenched in the Universal Declaration of Human Rights (UNDHR). But, the issue of the Book famine and ‘knowledge famine’ suffered by the blind and visually impaired population of the world because of their limited access to reproduced copyrighted works in accessible formats. Information plays a vital role in bringing about social inclusion. Social inclusion is based largely on equal participation which in turn depends on a fair understanding of issues in day to day life, societal issues and informed decisions. To participate equally in society, an individual needs information on a continuing basis. Also the access to unbiased information to visually impaired/blind is considered as the major human right issue and it is the responsibility of the society to make it in inclusive manner. In a word, inclusion - the feeling of being an active part of the society we live in. Clearly, this is not only a need, but a right, a human right. And as such right, persons with disabilities demand legal instruments, binding legal instruments - both at domestic and international level - that guarantee that information in a format they can use, can be produced, distributed, and freely exchanged legally and seamlessly.

Intellectual Property (IP) legislation is, by nature, territorial. This means that whatever rights, obligations, and limitations are expressed in the copyright law, these apply exclusively to the country where this law was enacted. Most of the countries had some provision in their IP legislation for the production and distribution of accessible format copies, but this exception could only be used at a national level.^[1] In India also, the new Indian copyright regime, exceptions and limitations for persons with disabilities were incorporated in Section 52(1)(zb) of Copyright Act amended in 2012.

According to Census 2011, there are 2.68 crore persons with disabilities in India which constitute 2.21 percent of the total population. The number of persons with various disabilities according to the 2011 Census is shown on table 1.1. Out of the total population of persons with disabilities, about 1.18 crore are female and 1.50 crore are male. This includes the persons with visual, hearing, speech and loco-motor disabilities, mental illness, mental retardation, multiple disabilities and other disabilities. As the Census 2011-2021 yet to come, the population of people with disabilities will be going to increase in the coming census.

The growing population of people with disabilities is a crucial factor for a developing nation like India and it is the duty of the society to facilitate accessibility of all kind of information for them. It has been estimated that human beings absorb as much as 80% of information about their immediate environment by means of sight^[2], visually impaired/blind people, therefore, and are at greatest risk of being socially excluded as a result of limited access to information. It is estimated that less than 10% of published material are in accessible form for the people with print disabilities and it is about 1 to 2 % in developing countries. A developing society cannot avoid the massive strength of growing population of people with disabilities. It is the duty of the society to bring this community to the main stream by making the information and resources available and accessible to them. Also, the humans in addition to access to all basic rights; disabled persons need a safe, secure, convenient, beneficial and accessible environment which is respectful of their human dignity.

^[3] In keeping these fundamental objectives of social inclusion and human right issues the Treaty of Marrakesh and Indian Copyright (amendment) Act, 2012 were formulated.

Table 1.1: Population of persons with disabilities in India as per census 2001-2011^[4]

| Disabilities | Population in Lakh | Percentage of total population in India |
|-----------------------|--------------------|---|
| Seeing | 50.32 | 18.8 |
| Hearing | 50.71 | 18.9 |
| Speech | 19.98 | 7.5 |
| Movement | 54.36 | 20.3 |
| Mental Retardation | 15.05 | 5.6 |
| Mental illness | 7.22 | 2.7 |
| Multiple Disabilities | 21.16 | 18.4 |
| Other | 49.27 | 7.9 |
| Total | 268.10 | 100 |

(Source: Census of India, 2011)

Normally, the problems of access to copyrighted works for visually impaired are;

1. Restrictions on copyrights, 2. Optional nature of limitations and exceptions, 3. Restrictions on type of works, 4. Restrictions on accessible formats, 5. Restrictions on purposes of use, 6. Restrictions on beneficiaries, 7. Digital rights management and access, 8. Remunerating right holders, 9. Commercial availability, 10. Translation and cross-border exchange of works, 11. Harmonisation, equality, and the visually impaired and so on. So, it is need that the national copyright Act should incorporate these issues with their provisions in Act in order to solve them.

This paper critically analyse the right of accessibility visually impaired under copyright law in Indian copyright regime.

II. COPYRIGHT PROVISIONS FOR VISUALLY IMPAIRED PERSONS IN INDIA

In India, prior to the 2012 Amendment, copyright laws hindered access to persons with disabilities since the owner of copyright in a work had the exclusive right to adapt, make copies, communicate to the public etc. Therefore, any conversion of a book into accessible formats such as Braille, audio books, etc., for the benefit of persons with print disabilities was considered as copyright infringement unless it was undertaken by the owner of copyright or with the permission of the owner of copyright. The Amendment of 2012 does away with the necessity to seek the consent of the authors for converting their books into accessible formats. The Amendment of 2012 largely aimed at making Copyright Act, 1957 compliant with the WIPO Copyright Treaty (WCT), the WIPO Performers and Phonograms Treaty (WPPT) and most of the international treaties and conventions in field of copyrights. Of the numerous changes brought about in the new Indian copyright regime, exceptions and limitations for persons with disabilities were incorporated in the following provision,

52(1)(zb): The adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by-
 (i) any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or
 (ii) any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons:

Provided that the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production:

Provided further that the organisation shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business.

*Explanation-*For the purposes of this sub-clause, "any organization" includes an organisation registered under section 12A of the Income-tax Act, 1961 and working for the benefit of persons with disability or recognised under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection or Rights and Full Participation) Act, 1995 or receiving grants from the government for facilitating access to persons with disabilities or an educational institution or library or archives recognised by the Government.^[5]

Thus, to this extent, the Act provides that it would not be a copyright infringement if any individual or any organization working for the benefit of the persons with disabilities and on a non-profit basis creates accessible format copies or distributes them to persons with disabilities.

III. COMPULSORY LICENCE FOR BENEFIT OF DISABLED

Although the Section 52(1)(zb) prohibits conversion of copyrighted works on a profit basis, any person or an organisation can apply for a licence from the Copyright Board in accordance with the procedure laid down in the Section 31 B.

Section 31 B: (1) Any person working for the benefit of persons with disability on a profit basis or for business may apply to the Copyright Board, in such form and manner and accompanied by such fee as may be prescribed, for a compulsory licence to publish any working which copyright subsists for the benefit of such persons, in a case to which clause (zb) of sub-section (1) of section 52 does not apply and the Copyright Board shall dispose of such application as expeditiously as possible and endeavour shall be made to dispose of such application within a period of two months from the date of receipt of the application .

(2) The Copyright Board may, on receipt of an application under sub-section (1), inquire, or direct such inquiry as it considers necessary to establish the credentials of the applicant and satisfy itself that the application has been made in good faith.

(3) If the Copyright Board is satisfied, after giving to the owners of rights in the working a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, that a compulsory licence needs to be issued to make the working available to the disabled, it may direct the Registrar of Copyrights to grant to the applicant such a licence to publish the work.

(4) Every compulsory licence issued under this section shall specify the means and format of publication, the period during which the compulsory licence may be exercised and, in the case of issue of copies, the number of copies that may be issued including the rate or royalty:

Provided that where the Copyright Board has issued such a compulsory licence it may, on a further application and after giving reasonable opportunity to the owners of rights, extend the period of such compulsory licence and allow the issue of more copies as it may deem fit.^[5]

IV. DOCTRINE OF FAIR USE

The fair use privilege is codified in the Copyright Acts of India, the United States, Great Britain and almost every other nation in the world. In India and UK it is called “fair dealing”, whereas in the United States it is called as “fair use doctrine”. Fair dealing is a copyright principle grounded in the belief that the public is entitled to freely use portions of copyrighted materials for purposes of teaching, research, scholarship and commentary. Normally a teacher or pupil following the guidelines can feel comfortable that it falls under the fair use bracket and not an infringement. The act gives four factors to be considered to determine whether a particular use is a fair use. The reason of the use, i.e. commercial or educational, transformative or reproductive; the nature of the copyrighted work, i.e. fictional or factual, the degree of creativity; the amount and substantiality of the portion of the original work used; and the effect of the use upon the market for the original work. The Berne Convention and TRIPS Agreement state that the Copyright Act of the contracting parties can have fair use exceptions. The TRIPS agreement-Article 13 lays down a three step test. Firstly the exception must be special; secondly, it must not conflict with the normal economic exploitation of the work; and thirdly, it must not unreasonably cause prejudice to the legitimate interests of the right holder.

Fair Use in United States is of the four part test fair Use 17 United States Code § 107 as follows;

... the fair use of a copyrighted work...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include -

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

In Indian Copyright Act, 1957, the concept of fair use is rooted through Section 52. Some important Sections are as listed-

- (a) In Section 52(1)(i), reproduction of any work by a teacher or a pupil in the course of instruction is considered as fair use.
- (b) In Section 52(1)(n) gives special privilege to non-commercial public libraries to store works in electronic medium for the purpose of preservation, if the library already possesses a non-digital copy of the work.
- (c) In Section 52(1)(o) permits non-commercial public libraries to make not more than three copies of a book, if such book is not available for sale in India.
- (d) In Section 52(1)(p) permits for the purpose of research, unpublished works kept in museums and libraries can be reproduced.
- (e) In Section 52(1)(zb) delivers that the adaption, reproduction and issue of copies of communication to the public of any work in any accessible format to facilitate persons with disability.

V. CONSTITUTIONAL PROVISION FOR DISABLED IN INDIA

The Constitution of India applies no discrimination to all legal citizen of India, whether they are healthy or disabled in any way (physically or mentally). Under the Constitution, the disabled are guaranteed the following fundamental rights and constitutional provisions:^[6]

1. The Constitution preamble secures to the citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity.
2. Article 15(1) of Constitution assures that no discrimination against any citizen of India (including disabled) on the ground of religion, race, caste, sex or place of birth.
3. Article 15 (2) of Constitution guarantees that no citizen (including the disabled) shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access to shops, public restaurants, hotels and places of public entertainment or in the use of bathing ghats, wells, tanks, roads and places of public resort which are maintained wholly or partly out of government funds or dedicated to the use of the general public. Women and Children and those belonging to any Socially and Educationally backward classes or the Scheduled Castes and Tribes can be given the benefit of Special laws or Special provisions made by the State. The Article also provides the equality of opportunity for all citizens (including the disabled) in matters relating to Employment or Appointment to any office under the State.
4. Article 17 of the Constitution prohibits Untouchability and punishable in accordance with law so no person including the disabled irrespective of his belonging can be treated as an untouchable.
5. Article 21 of the Constitution guarantees the every person including the disabled, the right of life and liberty.
6. Article 21A obligates the state to provide free and compulsory education to all children of the age of six to fourteen year. All children includes disables also.
7. According to Article 23 of constitution, there can be no traffic in human beings (including disabled), and beggar and other forms of forced labour is prohibited and the same is made punishable in accordance with law.
8. Article 24 of the Constitution prohibits employment of children (including disabled) below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment. Even though the private contractor acting for the Government cannot engage children below the age of 14 years in such employment.
9. According to Article 25 of the Constitution that every citizen (including disabled) has the right to freedom of religion. So the every person including disabled has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health.
10. According to Article 29(1), any section of citizen residing in the territory of India (including disabled) having a distinct language, script or culture of its own shall have the right to conserve the same.
11. Article 29(2) of the Constitution provides that no citizen (including disabled) shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language or any of them.
12. Every disabled person can move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by right of constitutional remedies under Article 32 of Constitution.
13. Article 41 obligates the state, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and even in the other cases of undeserved want.

14. According to Article 45, the state shall endeavour to provide early childhood care and education for all children (including disabled) until they complete the age of six years.
15. According to Article 51A(k), parent or guardians must provide opportunities for education to his child (including disabled) or, as the case may be, ward between the age of six and fourteen years.

VI. THE PERSON WITH DISABILITY ACT, 1995

In 1995, for eliminating all barriers to full participation of disabled persons in the society, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act was passed by the Union Parliament of India. The Act incorporates provisions for non-discrimination and affirmative action and provides equal opportunities in education and employment to disabled persons. Under the Section 26 of the Act, Government and local authorities shall ensure and provide free education for every disabled children below 18 years in an appropriate environment. According to Section 27 of the Act, the Government has to make schemes and programmes for non-formal education and provide free access to special books and equipments needed for education of disabled children. The “special books” means the books which are in accessible formats for disabled students. According to Section 28, Governments shall initiate or cause to be initiated research by official and non-governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education. The Section 48 of the Act states that the appropriate Governments and local authorities shall promote and sponsor research in the areas; (a) prevention of disability; (b) rehabilitation including community based rehabilitation; (c) development of assistive devices including their psycho-social aspects; (d) job identification; (e) on site modifications in offices and factories. The Section 49 states that the appropriate Governments shall provide financial assistance to universities, other institutions of higher learning, professional bodies and non-governmental research-units or institutions, for undertaking research for special education, rehabilitation and manpower development^[7],

Thus, the law suggests that the Government should not only provide materials in accessible formats to the person with disability but also actively assist in development of technology for conversion of materials into accessible formats. In fact, the Act is much consistent with the mandate to provide a life of dignity, a healthy standard of living, assistive facilities and an enabling environment to disabled persons as a matter of right and as a matter of ensuring availability of equal opportunities to them.

Important definitions under Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are ^[7],

Section 2(b): “blindness” refers to a condition where a person suffers from any of the following conditions, namely:—

- (i) total absence of sight; or
- (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or
- (iii) limitation of the field of vision subtending an angle of 20 degree or worse;

Section 2(i): “disability” means—

- (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness.

Section 2(t): “person with disability” means a person suffering from not less than forty per cent of any disability as certified by a medical authority.

Section 2(u): “person with low vision” means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device.

VII. RIGHT OF PERSONS WITH DISABILITY ACT, 2016

The main intension of this act to give effect to United Nations Convention on the Right of Persons with Disabilities. United Nations General Assembly adopted its Convention on 13th December, 2006.

The convention lays down the following principles for the empowerment of persons with disabilities-

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

India is the signatory of this convention so India ratify the said convention on 1st October, 2007. It considered to implement the convention considering in view enacted the Right of persons with Disability Act, 2016 which come in force on 27th December, 2016. The Act includes some important Sections which assures right of persons with disability some of these are, Equality and non-discrimination [Section 3], Protection and Safety [Section 8], Specific measures to promote and facilitate inclusive education [Section 17], Vocational training and self-employment [Section 19], No discrimination in employment [Section 20], Social security [Section 24], Healthcare [Section 25], Reservation in higher educational institutions [Section 32] etc.

Some important definitions under the Act are^[8],

Section 2(f) “ Communication” includes means and format of communication, languages, display of text, Braille, tactile communication, sign, large print, accessible multimedia, written, audio, video, visual displays, sign language, plain-language, human-reader, augmentative and alternative modes and accessible information and communication technology.

Section 2(m) “inclusive education” means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disability.

Section 2(s) “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.

Section 42: Access to information and communication technology

Under this section the appropriate Government shall take measure to ensure that-

- (i) All content available in audio, print and electronic media in accessible format;

- (ii) Persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close capturing;
 - (iii) Electronic goods and equipment which are meant for everyday use are available in universal design.
- The Act in its schedule specifies the different disabilities.
The schedule of this act, under specified disability-1. Physical disability-
1[B] Visual impairment-
- (a) "blindness" means a condition where a person has any of the following conditions, after best correction-
 - (i) total absence of sight; or
 - (ii) visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction; or
 - (iii) limitation of the field of vision subtending an angle of less than 10 degree.
 - (b) "low-vision" means a condition where a person has any of the following conditions, namely:-
 - (i) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible correction; or
 - (ii) limitation of the field of vision subtending an angle of less than 40 degree upto 10 degree.

VIII. MARRAKESH TREATY

Only about less than 10% of published works are made available globally in accessible format, and in the developing world, where 90% of blind and visually impaired people reside, the figure is less than 1-2%. This problem is partly due to limitation created by copyright law. The Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print-disabled (2013), entered into force on 30th September, 2016.^[9] India was the first country to ratify the treaty on 24th July, 2014.^[10] The treaty was adopted to amend copyright law that prevented access to print works for print disabled people. The treaty aims at removing that limitations. The key changes to the law ensure that accessible format copy may be made and supplied to print disabled persons or an institution, such as a library, within a country or across a national border to another ratifying nation.

The treaty aims at improving access for the blind, visually impaired and print disabled to published works in the formats such as Braille, large print text and audio books. The treaty obligates the contracting parties to provide provisions in their national copyright laws to facilitate the availability of works in accessible format copies for beneficiary persons by imposing limitations or exceptions on the right of reproduction, the right of distribution, and the right of making availability to the public of the copyright owner.

The limitation and exceptions on the rights of copyright owner may be imposed by enabling authorized entities to do the following acts on a non-profit basis; to make an accessible format copy of a work, to obtain from another authorized entity an accessible format copy, and to supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means.

The treaty also obligates contracting parties to exchange the accessible format copies cross border for the benefits of beneficiary persons. The treaty also obligates contracting parties to enable the beneficiary persons or authorized entity to import an accessible format copy for the benefits of beneficiary persons without the authorization of the right holder. The legal protection and effective legal remedies against the circumvention of effective technology measure provided by contracting parties will not prevent beneficiary persons from enjoying the limitations and exceptions provided in the treaty.

Section 52 of the Indian Copyright Act, which concerns with fair use/fair dealing, there exists an added provision Section 52 (1) (zb) regarding exceptions which would not amount to a copyright infringement. This provision permits the conversion of a work into an accessible format exclusively for the benefit of a differently abled people. Although this amendment was introduced much before the Marrakesh Treaty coming into picture, it may have been upheld to be a beacon for other countries during the Marrakesh Conference.^[11]

The treaty has the notable potential to make the information available accessible and usable to the person with disabilities by increasing the production of accessible format and ensuring and promoting the cross border exchange of accessible resources for the person with print disabilities. In the treaty, Article 2(a) clearly describes the types of materials by the word "Work". Article 2(b) describes an "accessible format copy" as a copy of a work in a form which gives a beneficiary person "access as feasibly and comfortably as a person without visual impairment or other print disability." These two sections facilitate availability and the production of documents which can be converted into accessible format for the person with disabilities. Article 3 gives a proper definition on the beneficiary person. The article limited the use of the treaty to the persons who are blind, visually impaired or otherwise print disabled. Article 4 is about national law limitations and Exceptions regarding accessible format copies. The concept of inclusive nation can be discussed on the basis of this article. It emphasises on the responsibility and obligation of the nations. Its requires that the contracting parties shall provide in their national copyright laws for a limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WIPO Copyright Treaty (WCT), to facilitate the availability of works in accessible format copies for beneficiary persons. Such limitation or exception provided should permit changes needed to make the work accessible in the alternative format. The Article also includes that the authorized entities without authorization of the copyright holder can make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means subject to certain conditions like activity has lawful access, does not introduce changes other than those needed to make the work accessible to the beneficiary person, such accessible format copies are supplied exclusively to be used by beneficiary persons and the activity is undertaken on a non-profit basis. Social inclusion can be achieved only through the mutual coordination and co-operation at International level though resource sharing and the concept is assured through this article. So Article 5 and Article 6 ensures the maximum use of the documents by giving provision for cross-border exchange of accessible format copies by exporting and importing of accessible format copies. Article 5 precisely deals with the cross-border exchange of accessible format copies. It states that the contracting parties shall provide an accessible format copy if made under a limitation or exception or pursuant to operation of law may be distributed or made available by an authorized entity to a beneficiary or an authorized entity in another contracting party. Also contracting party may fulfil Article 5(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 5(4), General Principles on Implementation (Article 10) and General Obligations on Limitations and Exceptions (Article 11). Article 6 illustrates the importation of accessible format copies. It permits national law of a contracting parties to allow authorized entities or beneficiary persons to import accessible format copies from other contacting parties. Article 7 concerns with technological measures. It is concerned with technological barrier which is limiting the use of resources by the person with print disabilities. The development of information and communication technology facilitates maximum use of resources in accessible format and the right holders are using their right of protecting materials by using the

technological measures. Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty. Article 8 highlights respect for privacy and facilitates with privacy. The Contracting Parties shall endeavour to protect the privacy of beneficiary persons on an equal basis with others. The unbiased availability of resources to each and every person is underlined by the word respect for privacy. Article 9 illustrates the cooperation to facilitate cross-border exchange. Contracting parties shall endeavour to foster the cross-border exchange of accessible format copies by encouraging the voluntary sharing of information to assist authorized entities in identifying one another. The International Bureau of WIPO shall establish an information access point for this purpose. Also, the contracting parties recognize the importance of international cooperation and its promotion, in support of national efforts for realization of the purpose and objectives of this Treaty. As a result of this article, the maximum utilisation of resources possible and duplication of work can be avoided by the proper co-operation. Article 10 gives general principles on implementation. According to this article, contracting parties shall undertake to adopt the measures necessary to ensure the application of the treaty and make implementing provisions of the treaty within their own legal system and practice. Contracting Parties may fulfil their rights and obligations under this Treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof, within their national legal system and practice. These may include judicial, administrative or regulatory determinations for the benefit of beneficiary persons as to fair practices, dealings or uses to meet their needs consistent with the Contracting Parties' rights and obligations under the Berne Convention, other international treaties, and Article 11. General Obligations on Limitations and Exceptions is mentioned in Article 11. According to the article, contracting party may exercise the rights and shall comply with the obligations that that contracting party has under the Berne Convention-Article 9(2), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)- Article 13 and the WIPO Copyright Treaty- Article 10(1) and Article 10(2), including their interpretative agreements so that:

(a) Article 9(2) of the Berne Convention, a Contracting Party may permit the reproduction of works in certain special cases provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author;

(b) Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, a Contracting Party shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder;

(c) Article 10(1) of the WIPO Copyright Treaty, a Contracting Party may provide for limitations of or exceptions to the rights granted to authors under the WCT in certain special cases, that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author;

(d) Article 10(2) of the WIPO Copyright Treaty, a Contracting Party shall confine, when applying the Berne Convention, any limitations of or exceptions to rights to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

Article 12 Other Limitations and Exceptions are mentioned in Article 12. Accordingly to this Article, contracting parties recognize that a contracting party may implement in its national law other copyright limitations and exceptions for the benefit of beneficiary persons than are provided by this Treaty having regard to that contracting party's economic situation, and its social and cultural needs, in conformity with that contracting party's international rights and obligations, and in the case of a least-developed country taking into account its special needs and its particular international rights and obligations and flexibilities thereof. This Treaty is without prejudice to other limitations and exceptions for persons with disabilities provided by national law.

Some important articles of treaty as follows;^[12]

Article 2 Definitions

For the purposes of this Treaty:

(a) "works" means literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media;

(b) "accessible format copy" means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability. The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons;

(c) "authorized entity" means an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations.

An authorized entity establishes and follows its own practices:

- (i) to establish that the persons it serves are beneficiary persons;
- (ii) to limit to beneficiary persons and/or authorized entities its distribution and making available of accessible format copies;
- (iii) to discourage the reproduction, distribution and making available of unauthorized copies; and
- (iv) to maintain due care in, and records of, its handling of copies of works, while respecting the privacy of beneficiary persons in accordance with Article 8.

Article 3 Beneficiary Persons

A beneficiary person is a person who:

- (a) is blind;
- (b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or
- (c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading; regardless of any other disabilities.

IX. DISCUSSION

India is a member and signatory of many international organizations, conventions, agreements and treaties like World Intellectual Property Organization (WIPO), Berne Convention, TRIPS Agreement, Marrakesh Treaty etc. so in order to bring the Act into compliance with India's international commitments the Copyright Act of 1957 was amended several times in 1983, 1984, 1992, 1994, 1999 and 2012. Prior to 2012, the Indian Copyright Act of 1957 did not contain any specific exceptions for the benefit of the visually impaired/blind. The change came with the Copyright (Amendment) Act of 2012 that allows for adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format. Production and distribution of accessible formats can be done by any person facilitating access of the persons with disabilities or any organisation working for the benefit of persons with disabilities. Visually impaired/Blind can be benefited from Section 52 of Copyright Act of 1957 that sanctions a fair dealing with a literary, dramatic, musical or artistic work for purposes of private use including research the production of accessible formats is only possible on a non-profit basis and after the person or institution in charge has taken reasonable steps to prevent accessible copies from entry into ordinary channels of business. But, many international treaties governing global standards in copyright law require national legislations to adhere to the three-step test under the Berne Convention. The Berne Convention allows signatories to create exceptions to the rights of copyright holders if such exceptions meet the standard laid down by the three-step test as contained in Article 9(3). This standard has been incorporated by other international instruments governing intellectual property rights including TRIPS (Article 13) and the WIPO Copyright Treaty (Article 10). The Article 10(2) of the Berne Convention also provides for signatories to create uncompensated exceptions and limitations for use of copyrighted works for illustration in publications, broadcasts and sound recordings for teaching purposes. These exceptions are available to signatories of the TRIPS Agreement, which incorporates the provisions of the Berne Convention. Article 10(2) of the Berne Convention providing for exceptions for "teaching purposes" gains importance in respect of use of copyrighted works in accessible formats by print impaired persons for educational purposes. Provision for such an exception in the Berne Convention makes out a case for incorporation of a similar provision in national law governing copyright. So far Indian Copyright Act is concern there is no such provision for three step test for fair use of copyrighted materials whereas US copyright Act has provision of four step test. In *Super Cassette Industries Ltd. Vs Humar Television Network Pvt. Ltd.*^[13], the Delhi High Court rightly summarized the broad principles of law on "fair dealing", some principles are, (i) It is neither possible nor advisable to define the exact contours of fair dealing, (ii) It is a question of fact, degree and overall impression carried by the court, (iii) Public interest and what interests the public, need not be same. (iv) The right to make fair use or to deal fairly with the copyrighted work includes the right to criticize not only the style, but also the underlying doctrine or philosophy of the copyrighted work. In this regard criticism could be both "strong" and "unbalanced". Such criticism by itself will not result in forfeiture of the defence of fair dealing, (v) The motive of the user shall play an important role in assessing as to whether injunction ought to be granted. (vi) "Transformative use" may be deemed in certain situation as fair use of copyrighted work.

So fair use/fair dealing fully depends how the judicial system interpret the provisions in national law with international signatory treaties and judgements.

The provisions in fair dealing or fair use did not satisfies the need about right of accessibility of copyrighted materials hence in 2012 the Copyright Act, 1957 was amended and introduced Section 52(1)(zb). An author of the copyrighted work is granted with exclusive rights of use, reproduction, etc. but there a few exceptions wherein a copyrighted work can be used, copied or reproduced without obtaining the consent from the copyright owner. This section basically deals with such exceptions to copyright infringement and empowers individuals, educational establishments and non-profit organizations to reproduce all types of copyright-protected content in accessible formats for the benefit of disabled persons.

To this extent, the Act provides that it would not be a copyright infringement if any individual or any organization working for the benefit of the persons with disabilities and on a non-profit basis creates accessible format copies or distributes them to persons with disabilities. The section also put the limitation that the books reproduced in accessible formats under Section 52(1)(zb) shall be for only private or personal use, or for educational or research purposes and not for use on a profit-basis. The person or organization providing such accessible formats are obligated to ensure the converted formats do not enter the mainstream business channels. Since Section 52(1)(zb) prohibits conversion of copyrighted works on a profit basis, any person or an organisation working for the benefit of disabled persons on a profit basis or for business can undertake conversion and distribution by applying for a license from the Copyright Board in accordance with the procedure laid down in the Section 31 B.

The Section 52(1)(zb) is broadly worded, and allows the conversion of any work in any accessible format by any person or organisation till such reproduction is for the benefit of persons with any disability and the converting organisation or person is working on a non-profit basis ensuring that such copies are not used for business. But, Section 52 (1) (zb) is not clear whether the exception applies to the right of making available, which is essential for online transfer and sharing of accessible works. So the interpretation of "issue of copies or communication to the public" may potentially cover export of works. It is notable that the Amendment Act has tried to the Copyright Act in conformity with technological advances and concomitant international developments and so Section 65A and 65 B are added to promote digital rights management. The aim of these provisions is to protect the rights of the copyright owners in the digital domain. But the issue related to digital rights management and access as well the cross-border exchange of works for visually impaired are unresolved in present Act. Indian copyright law is not clear for the access to technology and information in accessible formats to its print impaired citizens so any attempt on part of a person to provide such access by reproduction of works in accessible formats may fall foul of copyright regulations.

It is also noted that neither the Constitution of India nor the Copyright Act provides clear definition about the "person with disability". Also, the type of accessible format and test of fair use or fair deal is not clearly mention in Copyright Act. This vacuum left by the Copyright Act is most readily filled by the law made by the judiciary. The judiciary interpreted the existent regime of intellectual property rights law to be consistent with public interest and with the public policy objectives of the State.

In the case of *Penguin Books Ltd. Vs Mls India Book Distributors*,^[14] Justice Rohtagi observed:

"Copyright is a property right, throughout the world retarded as a form of property worthy of special protection in ultimate public interest. The law starts from a premise that protection must be as long as broad possible and should provide only those expectations, limitations which are essential in public interest."

So it is rightly said, framing law is beauty of politicians executing the law is duty of administrator where interpreting the law is duty of court.

X. CONCLUSION

There was no provision in the copyright regime till the amendment in Copyright Act in year 2012, to provide for exceptions facilitating education or specific provisions for use of copyrighted works by persons with disabilities. In light of an absence of such a provision, the life of disabled person technically and legally became blind. In 2013, WIPO passed “Marrakesh Treaty” to facilitate access to published work for the persons who are blind or visually impaired or print disabled. This treaty allows members to provide copyright exceptions, so that the printed books are converted into formats that are accessible by the visually impaired. This all helps visually impaired/Blind/Print impaired to access the books in a format they can read. As India was among the first to ratify the Marrakesh Treaty, it has not still incorporated the some important provisions of the treaty within its domestic laws. It is also needed in Copyright Act the definitions of the “person with disability” and “accessible formats” to be correlated with the Right of Person with Disability Act, 2016 and/or The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Disability Act demands to reduce “environmental barriers” faced by person with disability for accessing the information in accessible format. It is undeniable that such access is a necessary condition in today’s day and to ensure equal opportunities for disabled persons in education and employment. To the some extent, an amendment of the copyright law providing for access to copyrighted material to the person with disability in accessible formats tried to reduce the barriers and covers the gap between the these Acts. Thus, the purpose of the Disability Act to the some extent is safeguarded by amended Copyright Act.

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