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A STUDY ON ACCESS TO COPYRIGHTED WORKS FOR PERSONS WITH DISABILITIES

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“People with disabilities are vulnerable because of the many barriers we face: attitudinal, physical, and financial. Addressing these barriers is within our reach and we have a moral duty to do so..... But most important, addressing these barriers will unlock the potential of so many people with so much to contribute to the world. Governments everywhere can no longer overlook the hundreds of millions of people with disabilities who are denied access to health, rehabilitation, support, education, and employment—and never get the chance to shine”.

- Stephen Hawking

ABSTRACT

The Blind, Visually Impaired Persons and Print Disabilities Persons are one of the categories of the Disabled persons. According to the World Blind Union (WBU) is a global organisation that represents the worldwide community of 285 million blind and partially sighted persons. It is estimated that over 90% of copyright works were not produced in accessible formats: in developing countries, this number drops to around 1% of published materials. This will result in “book famine”. To overcome “book famine” and for the purpose of to access the Copyrighted works to Visually Impaired Persons and Print Disabilities the Marrakesh Treaty signed in Marrakesh, Morocco, on 27 June 2013. India became the first country to ratify this treaty that is built on humanitarian grounds in respect of print disabled persons to access knowledge.

Keywords: Disabled persons, Visually Impaired Persons, Marrakesh Treaty, Copyright Act

1. INTRODUCTION

Education is a basic and fundamental human right enshrined in the Universal Declaration of Human Rights¹ and also under the Constitution of India.² Education is considered to be an important means of socialisation; it transforms a human being into a social being, and is instrumental in improving the life

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¹ Article 26, of Universal Declaration of Human Rights, 1948

² Article 21A

situation of human beings and enhancing their livelihood opportunities and helps in grabbing lot of opportunities available in the society with the help of education.

According to the “World report on Disability 2011” by the World Bank and World Health Organisation (WHO), there are one billion persons with disabilities Worldwide, who constitutes about 15% of the World’s population. 80% of the persons with disabilities live in Developing countries. There are 285 million persons with visual disabilities in the world who constitute 28.5% of the total disabled population of the world.

The World Health Organisation (WHO) reported in 2021 that “at least 2.2 Billion people have near or distance vision impairment” worldwide.

As per Census 2011, in India out of the 121 Cr population, about 2.68 Cr persons are ‘disabled’ which is 2.21 % of the total population. These include persons with Seeing, Hearing, Speech, Movement, Mental Retardation, Mental Illness, Multiple Disability and any other disabilities. Among 121 Cr of disabled population, 19% are with disability in seeing.

World Health Organisation estimates for the number of children (0-14 years) living with disabilities range between 93 million and 150 million worldwide. It is estimated that there are 26,505,000 to 42,705,000 children with visual disabilities in the world who constitute 28.5% of the total population of children with disabilities in the world. Many children and adults with disabilities have historically been excluded from educational opportunities. In many countries early efforts at providing education or training were generally through separate special schools, usually targeting specific impairments, such as schools for the blind, deaf, intellectually disabled. These institutions traditionally reached to only a less proportion of the needy and this will creates a barrier between children with visual disabilities with their families and communities. With the help of the convention and legislation we can encourage for more inclusive education by providing visually impaired accessible educational materials and this will help in bringing the visually impaired into a mainstream in the education system and society as well.

In this context for the purpose providing accessibility in education by providing copyrighted works to the visually Impaired Persons and Persons with Print Disabilities, a treaty was took place in Marrakesh and India is a signatory for that treaty. In this paper, we will focus on the Marrakesh Treaty, Copyright (Amendment) Act, 2012 and its implementation.

2. MEANING OF PERSON WITH DISABILITY AND VISUALLY IMPAIRED PERSONS

A disability is often described in terms of lack of normal functioning of physical, mental or psychological processes. It is also defined as learning difficulties or difficulties in adjusting socially, which interferes with a person’s normal growth and development.

The “person with disability”³ 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.

The “persons with disability”⁴ means a person suffering from any of the conditions relating to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability.

The International Classification of Diseases 11 (ICD 11) classifies vision impairment into two groups, distance and near presenting vision impairment.⁵

Distance vision impairment:

- Mild – visual acuity worse than 6/12 to 6/18
- Moderate – visual acuity worse than 6/60 to 6/60
- Severe – visual acuity worse than 6/60 to 3/60
- Blindness – visual acuity worse than 3/60

Near vision impairment:

- Near visual acuity worse than N6 or M.08 at 40 cm.

The “inclusive education”⁶ 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 disabilities;

The “public building”⁷ means a Government or private building, used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways;

3. THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (UNCRPD)

UNCRPD, 2006 recognizes the right of all children with disabilities both to be included in the general education systems and to receive the individual support they need. Systemic change to remove barriers and provide reasonable accommodation and support services is required to ensure that children with disabilities are not excluded from mainstream educational opportunities. Article 24 of the CRPD stresses the need for governments to ensure equal access to an "inclusive education system at all levels" and to provide reasonable accommodation and individual support services to persons with disabilities to facilitate their

³ Section 2(s), The Rights Of Persons With Disabilities Act, 2016.

⁴ Section 2(j) of The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

⁵ <https://www.who.int>

⁶ Section 2(m), The Rights Of Persons With Disabilities Act, 2016.

⁷ Section 2(w), The Rights Of Persons With Disabilities Act, 2016.

education. Article 24(3)(c) “Ensuring that the education of persons, and in particular children, who are blind, deaf and deaf blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.”

4. THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

The Rights of Persons with Disabilities Act, 2016 replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It fulfils the obligations to the United National Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory and ratified the said Convention on the 1st day of October, 2007. The Act came into force during December 2016.

The Object of An Act to give effect to the UNCRPD and for matters connected therewith or incidental thereto.

The aforesaid Convention lays down the following principles for 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;

Section 16 of the Rights of Persons with Disabilities Act, 2016 deals with the Duty of Educational Institutions:

The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

- i. admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;
- ii. make building, campus and various facilities accessible;
- iii. provide reasonable accommodation according to the individual’s requirements;
- iv. provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;

- v. ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;
- vi. detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;
- vii. monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;
- viii. provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.

Section 31 contained in the Rights of Children to Free and Compulsory Education Act, 2009, every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, of his choice.

Section 32 (1) provides, All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five percent seats for persons with benchmark disabilities. (2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.

5. MARRAKESH VIP TREATY

Marrakesh Treaty is to Facilitate Access to Published Works to Visually Impaired Persons and Persons with Print Disabilities. The Marrakesh VIP Treaty (formally the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled) is a treaty on copyright adopted in Marrakesh, Morocco, on 27 June 2013 by the member states of the World Intellectual Property Organization (WIPO). It achieved the deposit of 20 instruments of ratification or accession by eligible parties needed for entry into force on June 30, 2016 and entered into force three months later, on September 30, 2016. India signed the Marrakesh Treaty on April 30, 2014; ratification was on June 24, 2014 and forced from September 30, 2016.

The treaty seeks to remedy for a "book famine" for people who are unable to access standard print materials. Before the implementation of the treaty, the World Blind Union estimated that over 90% of copyrighted works were not produced in accessible formats: in developing countries, this number drops to around 1% of published materials.

Before the treaty was signed, under one third of countries provided a copyright exception to allow the sharing of works to people with disabilities without the copyright holders' permission. However, even when these copyright exemptions were present, individual countries could not share materials between themselves. As an example, the World Blind Union notes: "In Spain, for example, there are approximately 100,000 accessible books, whereas Argentina has only about 25,000. Yet Spain's accessible books cannot be exported legally to Argentina or to other Spanish-speaking countries." Additionally, where copyright exemptions did exist, they were not always uniform in nature. The United States has long had the Chafee

Amendment, which among other things allows for the existence of the National Library Service for the Blind and Print Disabled. However, this copyright exemption before the treaty only applied to previously published non-dramatic literary works. In contrast, Australia prior to the treaty already had copyright exemptions that applied to all literary and dramatic works. Establishing a treaty had as a goal creating one set of rules to help facilitate sharing of all manner of works across international borders.

6. COPYRIGHT (AMENDMENT) ACT, 2012

Copyright is a part of Intellectual Property Rights. Copyright means the exclusive right to do or authorise others to do certain acts in relation to original literary work, dramatic work, musical work, artistic work, computer programmes, cinematograph film and sound recording. Monopoly rights are naturally enjoyed by the author of the work according to the nature of work. The reason for giving protection is “What is worth copying is prima facie worth protecting” and to encourage the authors of the work. If any person without the consent or license of the author of the copyright work will attract for Infringement copyright under Section 51 of the Copyright Act, 1957. For the purpose of research, educational use, teaching purpose..etc will be considered as exception to Infringement copyright under Section 52.

For the purpose of access books for Persons who are visually impaired and print disabled on humanitarian concern, India is the first Country ratifies the “Marrakesh Treaty” easing Access to Books for Persons who are visually impaired under the Copyright (Amendment) Act, 2012.

Compulsory License for the benefit of disabled provision was inserted under Section 31B through the Copyright (Amendment) Act, 2012. This section says, Any person working for benefit of the disabled for profit or for business purposes can make an application for compulsory license to publish any work that is the subject of copyright protection. The publication of the work under the license must be for the benefit of disabled persons. The application must be made to the copyright board, and after due review, the board may direct the Registrar to issue a compulsory license.

Fair Dealing to accessible to disabled persons provision was inserted under Section 52(zb) through the Copyright (Amendment) Act, 2012. The use of a work for making it accessible to a disabled person is considered as fair dealing under the Indian Copyright Law. This exception is of two types:

- ✓ Exception for Personal Use, Education and Research; and
- ✓ Exception for Non-Profit Use

Permitted Rights:

The following rights may be exercised with respect to a copyrighted work under the exception:

- ✓ Right to Adaptation;
- ✓ Right to Reproduction;
- ✓ Right to Issue Copies; and
- ✓ Right to Communicate to the Public.

The said rights may be exercised with respect to a work in any accessible format.

7. ACCESS TO EDUCATION

With relating to right to education to disabled persons in India, so many policies and programme framed by the Government which are as follows:

7.1. National Policy on Education, 1986

The National Policy on Education was formulated in 1986 under the direction of former Prime Minister Rajiv Gandhi. In its initial forms, the policy did not mention education for children with disabilities at all. It was only after a series of protests and intense lobbying by parents of children with disabilities and organisations working in the field of disability that the policy was modified.

7.2. Inclusive Education, 1970s

Typically, in India, education for children with disabilities has been provided in special schools, facilities in which they have been separated from their comparatively able-bodied peers. Since the 1970s, the government has been making efforts to promote inclusive education and provide facilities that will enable all children, including children with disabilities, to be educated together.

7.3. Integrated Education for Disabled Children, 1974

The government launched the first major scheme to promote integrated education, called Integrated Education for Disabled Children, in 1974, primarily directed at children with visual and hearing impairments.

7.4. Project Integrated Education for the Disabled

Project Integrated Education for the Disabled was the second government scheme in 1987. It was a more broad-based version, including children with learning disabilities and severe disabilities. The programmes under the Project have met with mixed success. There are many reasons for this, not the least of which is that there is a widespread perception that the educational services provided at many government schools (apart from the Kendriya Vidyalayas and Navodaya Schools) is of indifferent quality. Also, private schools were not conducive to children with disabilities.

7.5. National Open Schools

The establishment of the National Open School system, which allows for greater flexibility to accommodate the learning needs of non-conventional learners, has been beneficial for many students with disabilities. Greater awareness about and recognition for the system needs to be generated, both among the academic community as well as the general public, so that graduates from the Open School system do not face discrimination in the fields of higher education and employment.

For the equal participation the 'SARV SHIKSHA ABHIYAN SCHEME' not only makes provision for the inclusion of children in the mainstream schools but it has also made a budget provision for it. Art. 21-A added to a Constitution with a title Right to Education, it is one of the Fundamental Right.

7.6. UGC Guidelines:

7.6.1. Guidelines for Persons with Disabilities Scheme in Universities XII Plan (2012-2017)

The UGC had started the scheme of assistance to universities/colleges for Higher Education for Persons with Special Needs (Differently-abled Persons) (HEPSN) during the Ninth Five-Year Plan, which continued in the Tenth Plan. Keeping in view the need to provide infrastructure to differently-abled persons in higher education institutions, the scheme is extended to the Twelfth Plan too. The details of the scheme are enumerated as follows:

The HEPSN scheme is basically meant for creating an environment at the higher education institutions to enrich higher education learning experiences of differently-abled persons. Creating awareness about the capabilities of differently-abled persons, construction aimed at improving accessibility, purchase of equipment to enrich learning, etc., are the broad categories of assistance under this scheme.

7.6.2. Specific Objectives of HEPSN

The specific objectives of the HEPSN Scheme are as follows:

1. To provide equal educational opportunities to differently-abled persons in higher education institutions.
2. To create awareness among the functionaries of higher education about the specific educational needs of differently-abled persons.
3. To equip higher education institutions with the facilities to provide access to differently-abled persons.
4. To provide special devices to higher education institutions that will augment the learning experiences of differently-abled persons.
5. To monitor the implementation of all existing and future legislation and policies, which are pertaining to higher education of differently-abled persons.

7.6.3. Eligibility:

Higher education institutes will be provided assistance under the HEPSN scheme when they fulfill the following conditions:

- 1) The college applying for grant for any one of the components of the scheme should have enrolled disabled persons, including persons with visual impairment, hearing impairment, and locomotor disability, etc., in various courses of the institute. The definitions of disability are in accordance with the Rights of Persons with Disabilities Act 2016.
- 2) Institutions applying for the scheme should have been approved by the UGC under Sections 2(f) and 12 B.
- 3) The college should have constituted an expert committee involving faculty members, experts in the field and differently-abled persons themselves. The committee should meet at least once a year to review the activities related to the concerned scheme(s).

8. JUDICIARY TOWARDS VISUALLY DISABLED

In *Disabled Right Group & Anr v. UOI & Ors*, case⁸ Justice A.K. Sikri held that, While dealing with the issue of reservation of seats in the educational institutions, Section 32 of the Disabilities Act, 2016 shall be complied with by all concerned educational institutions. In addition to the directions mentioned therein, we also direct that insofar as law colleges are concerned, intimation in this behalf shall be sent by those institutions to the Bar Council of India (BCI) as well. Other educational institutions will notify the compliance, each year, to the UGC. It will be within the discretion of the BCI and/or UGC to carry out inspections of such educational institutions to verify as to whether the provisions are complied with or not.

“Guidelines for Accessibility for Students with Disabilities in Universities/Colleges” are concerned, the UGC shall consider the feasibility thereof by constituting a Committee in this behalf. In this Committee, the UGC would be free to include persons from amongst Central Advisory Board, State Advisory Boards, Chief Commissioner of State Commissioners appointed under the Disabilities Act. This Committee shall undertake a detailed study for making provisions in respect of accessibility as well as pedagogy and would also suggest the modalities for implementing those suggestions, their funding and monitoring, etc.

In *V. Surendra Mohan v. State of Tamil Nadu*, case⁹ the Supreme Court held that, a judicial officer in a state has to possess reasonable limit of the faculties of hearing, sight and speech in order to hear cases and write judgements and, therefore, stipulating a limit of 50% disability in hearing impairment or visual impairment as a condition to be eligible for the post is a legitimate restriction i.e. fair, logical and reasonable and that it does not contravene any of the provisions of the Disabilities Act 1995 and any other statutory provision.

9. CONCLUSION

The Copyright (Amendment) Act, 2012 allowed compulsory license for disabled person and allowed to use the copyrighted work for fair use and implement the same according to the Marrakesh VIP Treaty, helps a lot to blind or visually impaired persons and print disabled persons in access learning materials, which are available in their user friendly methods. This Marrakesh VIP Treaty helps in encouraging inclusive education for blind or visually impaired persons and creates an opportunity to prove them that they were also competent and potential to reach any position in the society like abled persons. Both the Governmental and non-governmental organizations play an important role in providing persons who are blind or visually impaired with access to alternative format materials.

The National Library Service for the Blind and Print Disabled (NLS) partners in leveraging the Marrakesh Treaty to maximize the availability of accessible format works worldwide is the Accessible Books Consortium's (ABC's) Global Book Service (GBS), a project under the aegis of WIPO. GBS works with authorized entities such as NLS to make hundreds of thousands of accessible format works in 80 languages available for immediate download, along with 7,000 music scores. To date, NLS has shared over 103,000 digital accessible format works with GBS, including approximately 20,000 digital braille titles and about

⁸ SC WP (Civil), 2017

⁹ (2019) 4 SCC 237

84,000 audio books. In India also the 'Book famine' reduced with the help of compulsory license and blind or visually impaired and print disabled persons, access to education in an inclusive mode is encouraging more with the help of legislative initiation and Governmental policies.

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