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Right to Education, Copyright Law and Employment Benefits for Visually Impaired Persons: Human Rights Perspective

Abhay Kumar

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**RIGHT TO EDUCATION, COPYRIGHT LAW AND EMPLOYMENT
BENEFITS FOR VISUALLY IMPAIRED PERSONS:
Human Rights Perspective**

Abhay Kumar¹

***Abstract:** Copyright in the nature of monopoly right restrains others from exploiting, copying or reproducing the work without the consent of the author which poses considerable challenge in attainment of basic human rights like, access to knowledge, education, information, employment etc. However, this right is not absolute and subject to certain limitations and exceptions on the ground of public interest considerations. These limitations and exceptions are brought to justify the use of copyrighted material even without the consent of the owner and any act in derogation of that constitutes infringement of the rights of the copyright owner. It becomes more complex and creates lots of difficulty in case of disabled persons and more specifically in case of visually challenged individuals as the reproduction of copyrighted materials in formats accessible to these individuals is considered as infringement of copyright unless specific limitations and exceptions are met in this regard. The absence of copyright limitations and exceptions for the benefit of visually impaired individuals in many countries has accelerated the problem of book famine, leading to inadequate access to copyrighted learning materials which is discriminatory in nature. Several attempts are made to address these concerns at both national as well as international level by various agencies and international institutions. Keeping all these concerns in mind, this paper analyses the relevance of national and international copyright law and their impact on the rights of the visually impaired persons.*

***Key Words:** Copyright, limitations and Exceptions, Infringement, Visually Impaired Persons, Human Rights, Right to Education.*

I.

Introduction

Disabled person refers to a person facing physical challenges or limitations due to incapacitation or impairment and the term “Person with Disability” denotes an individual who has a persistent physical, mental, intellectual, or sensory impairment that hinders their fair and equitable participation in society. According to the UN General Assembly Declaration on the Rights of Disabled Persons 1975, disability encompasses both physical and mental impairments and a disabled person is someone who is incapable, to meet either wholly or partially,

¹ Assistant Professor of Law, National Law University Odisha

the essential requirements of a normal individual or social life. It includes every type of impairment including hearing, speech, and visual disability as well.² These people suffer from greater discrimination, lower standard of living and are often denied basic educational opportunities as compared to the rest of the populations due to their vulnerability. Amongst the diverse range of disabilities, vision impairment poses significant challenges, impeding individuals from effectively performing their daily chores and finding means to read and write becomes a difficult path for them.³

Access to knowledge creates opportunities for a quality education, successful employment and a fulfilling and self-sufficient personal life.⁴ It promotes the personal and professional development of the persons which ultimately accelerates the development of the states. Access to knowledge is closely associated with the right to education which is one of the essential prerequisites for the meaningful enjoyment of various human rights. It plays crucial role in the personal development, social integration and empowerment of every individual and becomes very much important especially in case of persons with visual disability. It becomes quite difficult and almost unachievable for blind, visually impaired and print disabled persons due to language barrier and unavailability of reading material in accessible formats, as less than 10% of all published material is available in such formats and most of these are in English alone.⁵

The recognition of this right as a fundamental human right was established in the Universal Declaration on Human Rights⁶, which served as the initial international document on human rights and reaffirmed in many subsequent international treaties like, UN General Assembly's Declaration of the Rights of the Child 1959, the UNESCO Convention against Discrimination in Education 1960, the UN

2. Similar approach has been followed in other international instruments like, Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region 1992 and the United Nations Convention on the Right of Persons with Disabilities, 2006.

3. Lida Ayoubi, "The Interface of Copyright and Human Rights: Access to Copyright Works for the Visually Impaired," Ph.D. thesis, Victoria University of Wellington 2015.

4. Catherine Jewell, *Removing Barriers to Literacy: How the Marrakesh VIP Treaty can change lives* WIPO Magazine (Feb 2015), available at: https://www.wipo.int/wipo_magazine/en/2015/01/article_0004.html last visited 9 September, 2024).

5. V.K. Ahuja, *Marrakesh Treaty to Facilitate Access to Published Works for Visually Disabled: Putting an End to Global Book Famine in Copyright Law in the Digital World: Challenges and Opportunities* (Springer Nature Singapore Pte Ltd.) (Manoj Kumar Sinha and Vandana Mahalwar eds. 2017).

6. Article 26 of Universal Declaration on Human Rights, 1948 guarantees free and compulsory elementary education to all and to make this principle legally binding for the ratifying states, the same principle was reinstated under Article 13 of the International Convention on Economic Social and Cultural Rights, 1976.

General Assembly Declaration on the Rights of Disabled Persons 1975, the UNESCO Convention on Technical and Vocational Education 1989, the United Nations Convention on the Rights of the Child (CRC) 1989, and most recently, in the United Nations Convention on the Rights of Persons with Disabilities (CRPD) 2006 also.⁷

The preamble to the World Declaration on Education for All emphasizes the significance of education as a crucial factor in personal and societal advancement. The United Nations Children's Fund (UNICEF) also perceives the social inclusion of these children as a vital element of social justice and an investment in the future of the society. Enhancing the accessibility of educational facilities facilitates their active participation in the socio-economic progress of their respective nations. Additionally, it can lead to the prevention of impairments and therefore contribute to reduction in their prevalence in the future as significant proportion of disabilities are the direct result of insufficient access to information and other socioeconomic factors such as poverty and inadequate healthcare standards. The implementation of educational initiatives aimed at reducing the occurrence and prevalence of disabilities afterwards can reduce some of the strain of limited financial and human resources of a country.

The significance of the right to education and ensuring equal access to education for individuals with disabilities is widely recognized in various national educational legislations as well. The United Kingdom's Disability Discrimination Act 1995, the United States No Child Left Behind Act 2001 and the Individuals with Disabilities Education Improvement Act 2004; the Canadian Human Rights Act 1977, the Australian Disability Discrimination Act 1992 and the Indian Rights of Persons with Disability Act, 2016 are some of the common examples which prohibits any kind of discrimination including discrimination in equal access to education on the ground of disability also.

II.

Right to education and employment of visually impaired persons

Like all other individuals, visually impaired persons are also entitled to a wide range of international legal and basic human rights. Across various treaties and conventions, the world community has acknowledged their unique challenges and recognized several rights to ensure their dignity, equal treatment and access to opportunities in every sphere of their life.

7. V.K. Ahuja, *supra* note 4 at 98.

The human right to education is a fundamental and universal entitlement recognized in international human rights law. It is a fundamental right that underpins the realization of other human rights and is essential for personal and social development of any individual.⁸The right to education serves as a prerequisite for the meaningful enjoyment and exercise of other human rights, aligning with the indivisibility and interdependence of all human rights.⁹ Access to education also plays crucial role in realizing the right to scientific freedom also as education empowers the individuals to engage in scientific pursuits. As part of the economic, social and cultural rights, it is essential for a human dignity and overall development of the society.¹⁰

Access to knowledge and education is the elementary step for realisation of basic human rights. They are closely associated with the right to employment and both are mutually reinforcing. Education serves as a foundation for employment opportunities and it can be achieved through proper implementation of right to work provisions for the individuals. Both these rights are recognized as fundamental human rights in various international agreements and conventions, including the Universal Declaration of Human Rights (UDHR)¹¹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹² These rights are essential for promoting economic well-being, dignity, and social justice for every class of people. Dealing with disability rights, the Convention on Rights of the Persons with Disabilities also mandates the States to “enable persons with disabilities to have effective access to general technical and vocational guidance programmes ... and vocational and continuing training” and ensures equality of these rights for them as well.¹³

Despite all these attempts, majority of the disabled persons and more than two-thirds of registered blind and partially sighted persons of working age are not engaged in the paid employment. Along with many other factors affecting the employment of visually impaired persons, non-access to copyright protected quality reading material is the biggest hindrance that has been acknowledged in

8. World Education Report, *The right to education: Towards education for all throughout life*, 16 UNESCO Digital Library (2000), available at: <https://unesdoc.unesco.org/ark:/48223/pf0000119720>(last visited 9 September, 2024).

9. Lida, *supra* note, 2 at 43

10. *Id.*

11. Article 23 of the Universal Declaration on Human Rights, 1948 recognises everyone’s right to work, free choice of employment, just and favourable conditions of work, and protection against unemployment.

12. The ICESCR puts the wording of art 23 and 26 of the UDHR in a single article. Article 6 (1) addresses the recognition of the right to work for everyone and art 6 (2) considers provision of “technical and vocational guidance and training programmes” as one of the steps that States Parties can take for full realisation of right to work.

13. Article 27, United Nations Convention on the Rights of Persons with Disabilities, 2008.

many international conventions¹⁴ and if that gets resolved by providing quality education and training, it will improve their chances of employability. Numerous government initiatives are in place in this area; however, there is a need for further efforts, including the provision of qualified instructors, modern and sufficient information technology, infrastructure, and the maintenance and refurbishment of physical facilities from elementary schools to higher education institutions (HEIs) to bring them in the mainstream of the society.

III.

Barriers for Visually Impaired Persons in Access to Knowledge and Education

In the pursuit of a comprehensive and inclusive society, access to knowledge and education is paramount. However, for visually impaired individuals, this journey is often fraught with challenges that hinder their ability to fully engage in educational opportunities. According to the World Blind Union (WBU) as of 2017-20, there were around 253 million blind and visually impaired persons; of these, 36 million people are blind and 217 million people have moderate or severe vision impairment.¹⁵ Accessible versions of copyright-protected learning materials are necessary for their overall growth and development. In 1829, Louis Braille created the six raised-dot technique to aid blind people in reading and writing. The Braille alphabet, however, did not become commonly used until the middle of the 19th century.¹⁶ Helen Keller got the credit of first deaf blind person to obtain a bachelor's degree in the arts, using the Braille system some 50 years after its invention.¹⁷

The accessibility of reading materials for the blind and visually impaired has, nevertheless, increased throughout the world as a result of several technical breakthroughs. The invention of tape recorders, personal computers, refreshable Braille displays and other adaptive technologies have played crucial role in this regard. However, despite all of these initiatives, the statistics of various organizations reveal very limited access of copyrighted materials to these visually impaired persons. Long back in the year 2007, the World Intellectual Property

14. *Supra* note 12, also requires the States to “Enable persons with disabilities to have effective access to general technical and vocational guidance programs, placement services and vocational and continuing training”

15. THE WORLD BLIND UNION (WBU) 2017-20 BROCHURE, available at: <https://worldblindunion.org/wp-content/uploads/2020/06/WBU-2017-Brochure-PDF.pdf> (last visited 19, Oct, 2023)

16. Russell Freedman and Kate Kiesler, ‘Out of Darkness: The Story of Louis Braille’ (Clarion Books, New York, 1997)

17. American Foundation for the Blind, “Helen Keller Biography”, available at: <https://www.afb.org/about-afb/history/helen-keller/biography-and-chronology/biography> (last visited Oct. 19, 2023)

Organization (WIPO) study report highlighted the availability rate of only 5% for these people, which is almost same till date.¹⁸World Blind Union (WBU) survey also replicates the same scenario that only 7% of books produced in the richest nations and less than 1% in the poorest regions are accessible to those who are blind or visually impaired.¹⁹

Even in well-developed nations such as the United States, the United Kingdom and the Netherlands, there has been little growth in this regard and this number has not exceeded 10 percent of the total published information of these countries till date. However, this number falls below 1 percent, in the developing nations where about 90% of the world's blind and visually impaired people live in. During the early 2000s, the Royal National Institute of Blind People (RNIB) of the United Kingdom introduced the term "global book famine" under its "Right to Read" campaign which pertains to the limited availability of books and copyrighted materials for individuals who are blind, visually impaired or have reading difficulties around the world.²⁰

Book Famine and the Human Rights of the Visually Impaired persons

Advocates for the "Right to Read" campaign have underscored the discriminatory character of this book scarcity experienced by visually impaired persons and its adverse impact on the fulfillment of their human rights. Nevertheless, in order to establish a human rights framework pertaining to copyright for these visually impaired persons, it is imperative to acknowledge and uphold the human rights of the copyright holder as well. The protective aspect of the copyright framework safeguards fundamental rights for authors, and the conversion of these works into any other format, including formats accessible to blind or visually impaired persons, necessitates a comprehensive assessment to determine whether such access would negatively impact the interests of the author.

In 2008, the World Blind Union (WBU) pushed for a provision for access to the same book at the same time and at the same price for visually impaired individuals. However, the main obstacle in implementing this approach was the possibility of infringement of rights of copyright holders in their copyrighted works. The discussion on striking a balance between the rights of both parties was

18. World Intellectual Property Organization (WIPO), *Standing Committee on Copyright and Related Rights (SCCR), Study on Copyright Limitations and Exceptions for the visually impaired*, available at: https://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf(last visited 21,Oct, 2023)

19. This data was revealed by World Blind Union (WBU) in its 2013 survey, June 17 Press Release for WIPO Book Treaty' (WBU, 17 June 2013), available at: <https://www.daru.org.au/wp/wp-content/uploads/2013/06/WBU-press-release-17th-June.doc>>(last visited 23,Oct, 2023)

20. Lida, *supra* note, 2 at 2-3

held at various international conventions and finally the provisions for specific exceptions were brought under the Marrakesh Treaty in this regard.

Copyright Issue and the Rights of Visually Impaired Persons

Copyright law is another significant barrier to the growth of visually impaired persons. Originally it was designed to give certain commercial and financial benefits to the labours of authors or creators however, over the time, especially after the inclusion of limitations and exception provisions, it got more inclined towards societal or public interests and made significant contribution towards achievement of human rights of the general public such as, freedom of expression, education, and participation in cultural life through its well-defined and advanced mechanisms.²¹In its initial days, it created various difficulties to visually impaired individuals and they encountered several obstacles regarding access to copyrighted materials such as books, articles, and other written content. The initial copyright legislation, the Statute of Anne, 1710 also did not address these concerns significantly and the condition was almost same even till the adoption of the first important copyright treaty Berne Convention 1886 also.²²

Although these issues were not specifically addressed under the original Berne Convention but its negotiation history suggests that members of the Berne Union were conscious of finding a balance between intellectual property protections and ensuring their public access as well. With the passage of time, it was specifically addressed in the form of limitations and exemptions, which paved the way for subsequent international copyright treaties. They were incorporated for the first time in the 1967 Stockholm Conference for the Revision of the Berne Convention which laid down three basic requirements to determine the legitimacy of these provisions. It allowed the Member States to incorporate the provision for permitting the reproduction of literary and artistic works in certain special cases such as education, research, and public library activities, 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 in their domestic copyright law.²³This test is known as three-step test in copyright discourse and it recognized the importance of copyrighted works in the social and economic well-being of every individual.

21. Ruth Okediji, *Securing Intellectual Property Objectives: New Approaches to Human Rights Considerations in Casting the Net Wider: Human Rights, Development and New Duty-Bearers* 213-14(Intersection, Antwerp) (Margot E Salomon, Arne Tostensen and Wouter Vandenhole eds. 2007)

22. Judith Sullivan, Study on Copyright Limitations and Exceptions for the Visually Impaired (2007WIPO Doc. SCCR/15/7), available at: https://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf (last visited 25, Oct, 2023)

23. Berne Convention for the Protection of Literary and Artistic Works, 1886, art. 9 (2)

However, even after the general acceptance of this test under the Berne Revision 1967, it does not get very much popularity in the beginning. TRIPS Agreement is another significant breakthrough which sets out minimum standards for intellectual property protection and established the relevance of this test as basis for the copyright flexibilities. This agreement elevated its status at the global level and after that it became cornerstone for limitations and exceptions for subsequent copyright treaties.²⁴The WIPO Internet Treaties 1996, the Beijing Treaty on Audiovisual Performances 2012, the Marrakesh Treaty, 2013 etc. also emphasize the need of striking a balance between copyright protection and the larger public interest particularly education, research and access to information. Amongst all of these international legal instruments, only the Marrakesh Treaty, 2013 provided direct provisions for copyright exceptions for the blind or visually impaired persons.²⁵

IV.

Marrakesh Treaty and Rights of Blind and Visually Impaired Persons

In June 2013, World Intellectual Property Organization (WIPO) passed “Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled” which recognized the rights of the visually impaired persons to access the books in a readable format. This treaty gave certain flexibility to the member states to provide copyright exceptions, enabling the conversion of printed books into formats accessible to the visually impaired persons. It is the first international intellectual property instrument aimed to focus solely on copyright flexibilities and address the concern of limited availability of books for these special categories of persons.

This treaty establishes an international legal framework for creating and sharing accessible formats of reading materials like, Braille, large print, audio books etc., and ensures equitable access to knowledge and educational materials for these specially baled persons. Like other copyright treaties, it also derives its basis from the Berne Convention and recognizes the economic rights of copyright holders. It contains certain provisions for remuneration of right holders and restricts the use

24.This test has been further incorporated under Article 13 of TRIPS Agreement as, “Members shall confine limitations and 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.”

25.The Marrakesh Treaty was adopted with the aim of upholding the principles of non-discrimination, equal opportunity, accessibility, and full and effective participation and inclusion in society, as stated in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities.

and application of copyrighted material under certain situations like, commercial availability of accessible formats.²⁶

However, some of the international publishers of electronic materials are not ready to acknowledge the rights of visually impaired persons under Indian Copyright Law. This problem was considered globally and in 2014, with the efforts of WIPO, the World Blind Union and other international institutions like, the International Federation of Library Associations and Institutions etc. the Accessible Books Consortium (ABC) was launched to support the goals of this treaty. In spite of all these attempts, the situation with respect to good-quality books and literature has not improved very much so far as majority of the developed countries are taking their time to ratify this treaty and unless and until they will create exceptions in their copyright laws, the problem will remain almost same.²⁷

Marrakesh Treaty and Minimum Mandatory Exceptions

The preamble of the Marrakesh Treaty underscores the significance of establishing a global legal structure to ease the availability of accessible works for individuals with visual impairments and other print-related disabilities. It mandates the nations to implement copyright limitations and exemptions permitting the production and circulation of accessible versions of copyrighted materials, without the consent of the copyright holders. It emphasizes the significance of establishing a comprehensive legal framework at global level to effectively enable individuals with vision impairments and other print disabilities to get accessible version of the works. This Treaty does not introduce any new copyright flexibility; rather, it elucidates the existing flexibilities that nations possess in order to fulfill their human rights obligations towards individuals with visual impairments.²⁸

This treaty expands the scope of copyright exceptions for accessibility of statutory, administrative or judicial determinations for the benefit of visually impaired and treats that as fair practices or fair dealings to meet their needs. It does not expressly require the contracting States to grant unconditional application of limitations and exceptions to visually impaired or their representatives. This treaty creates a delicate balance between the rights of the copyright owner and the rights of the beneficiaries and puts a reasonable basis for the production of the copyrighted material that such materials should not be used with profit motive purpose.²⁹

26. Marrakesh Treaty 2013, art. 4 (4).

27. The United States signed the Treaty in the same year it was adopted, but the Congress implemented it five years later through specific legislation in the Marrakesh Treaty Implementation Act, 2018.

28. The World Blind Union Guide to the Marrakesh Treaty, available at: https://www.wipo.int/edocs/mdocs/copyright/en/wipo_cr_mow_17/wipo_cr_mow_17_to_pic_2_c.pdf (last visited 25, Oct, 2023)

29. *Id* 25, Art2

It stipulates that an individual who is the beneficiary or someone acting on their behalf, such as a primary caregiver or caretaker, may create an accessible format copy of a work for their own personal use and they are also allowed to facilitate another individual in creating and using accessible format copies of the copyrighted works.³⁰ Some other examples that authorize the working organizations to apply limitations and exception include, lawful access to a copyright work or a copy of it;³¹ avoiding changes other than those needed to make the work accessible;³² supplying accessible works exclusively for use by the visually impaired persons.³³

The Treaty does not restrict the application of limitations and exceptions only to the production of specific formats. However, it mandates the States to authorize the production of copyrighted works in all accessible formats and it is completely left to the discretion of the Contracting States to restrict or permit the production of copyrighted works to certain or all accessible formats.

V.

Digital Rights Management and Access of Learning Materials for Visually Impaired Persons

Digital Rights Management (DRM) refers to the technologies, systems, and processes used to protect and manage digital content, such as music, movies, e-books, and software. DRM aims to prevent unauthorized copying, distribution, modification, or use of copyrighted material. This concept has faced criticism due to its potential impact on user rights and limitations and exceptions to copyright. It negatively affects the use of limitations and exceptions for the benefit of the visually impaired also.

Digital Rights Management also includes the application of Technological Protection Measures (TPM) and enables the content providers to manage the access to their digital products. They can implement access controls, such as requiring users to enter a license key or log in to an authorized account, to ensure that only authorized individuals can access the content. However, the Marrakesh Treaty requires the member states to take appropriate measures, as necessary to ensure that the legal protection of Technological Protection Measures does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty.³⁴

30. *Id.* art. 4(2).

31. *Id.* art. 4 (2) (i).

32. *Id.* art. 4 (2) (ii).

33. *Id.* art. 4 (2) (iii).

34. *Id.* art. 7.

To deal with these difficulties of TPMs, most of the jurisdictions have adopted certain provisions to create a balance between them but this step would have garnered broader appreciation if the Treaty itself had provided more explicit guidelines to ensure the seamless implementation of its compatibility.

Cross-border exchange of accessible works

According to WIPO study report 2007, more than half century countries of the world had already incorporated provisions for limitations and exceptions benefiting the visually impaired into their national laws. Since then, several nations, including Colombia, Mauritius, and India, have either modified their copyright laws or enacted new legislation to include these limitations and exceptions. However, as compared to the developed jurisdictions, these nations had very few accessible works and to provide a viable solution to these problems, the Treaty contained the provision for exchange of accessible copies of copyright works internationally.³⁵

The Treaty authorizes the countries which are not party to the Berne Union to receive copies of accessible works from other countries. However, to safeguard the rights of copyright holders, it further stipulates that the distribution or availability of accessible works should be restricted to beneficiaries within the jurisdiction of those countries.³⁶The Treaty also establishes exceptions for countries which are signatories of the WIPO Copyright Treaty but are not the members Berne Union and they are also allowed to distribute or make works available to other jurisdictions, subject to three-step test and independent reproduction of the work. This provision effectively resolves the issue of “Berne Gap “regarding application of the three-step test to the right of distribution in countries which are not part of the Berne Convention.

The countries which have ratified the Marrakesh Treaty without being parties to the Berne or the WCT are allowed participate in the global exchange of accessible works. These states are permitted to receive accessible copies from other authorized entities however; their distribution is confined to the local boundaries of such states.³⁷It is however, subject to domestic copyright law whether the authorized entities of these countries can distribute their works to other jurisdictions or not.

The Treaty ultimately requires the member States to implement necessary measures to promote the cross-border exchange of accessible works including voluntary sharing of information amongst authorized entities to mutually identify

35. *Id.* Arts. 5 and 6.

36. See WIPO SSCR, *Interventions by Non-Governmental Organizations*, SCCR/21/13, available at: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=155540 (last visited 28, Oct, 2023).

37. *Id.*

each other as well as communicating that information to the general public also. In this regard WIPO has established an information access point to share information about the functioning of the Treaty and to facilitate the exchange of works in the interest of such print disabled persons.³⁸

VI.

Indian copyright law and access for the visually impaired to copyright works

Copyright in the nature of monopoly right restrains others from exercising that which has exclusively been conferred on the owner. It prevents others from exploiting, copying or reproducing the work of the author for their own benefits. It includes a bundle of rights including economic rights as well as moral rights such as, right to claim share in resale price of a work, right to claim the possession of the infringing material and right against any distortions, mutilation and modification as well. However, such rights are not absolute and subject to certain limitations and exceptions in larger public interest including the interests of visually impaired persons as well.³⁹

India is a member of and party to many international organizations, conventions, agreements and treaties like World Intellectual Property Organization (WIPO), Berne Convention, TRIPS Agreement, Marrakesh Treaty etc. and in order to bring the Act into compliance with these international instruments the Copyright Act of 1957 was amended several times i.e., in 1983, 1984, 1992, 1994, 1999 and 2012. Prior to 2012, the Copyright Act, 1957 did not contain any specific exceptions for the benefit of the visually impaired/blind persons. However, the visually impaired were getting indirect benefit from general provision of section 52 of the Act which allowed “a fair dealing with a literary, dramatic, musical or artistic work” for “purposes of private use including research”. This amendment added specific provision for adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format by any person or organization working for the benefit of persons with disabilities.⁴⁰

The Amendment Act also considered this issue categorically and it specifically prohibited the production of accessible formats for commercial gain. The same

38. Lida, *supra note 2* at 164.

39. H.K SAHARAY, IYENGAR’S COMMENTARY ON THE COPYRIGHT ACT 404 (9th ed, Universal Law Publishing 2016).

40. The Copyright (Amendment) Act, 2012, Section 52 (1) (zb) under the parent Act and it provides that the “adaptation, reproduction and issue of copies or communication to the public of any work in any accessible format” to facilitate persons with disability to access the works is not an infringement of copyright.

approach has been supported by amended compulsory licensing provision in the interest of these specially baled persons and the individuals working for profit or business purposes but for the betterment of persons with disabilities is not restricted from being the applicant for such licenses.⁴¹It further prohibited the importation of such works, which if created in India and would have constituted the infringement.⁴²Therefore, the individuals who are visually impaired or their institutions could potentially import copies that fulfill the criteria of section 52 (1) (zebu) and are not considered as infringing.⁴³These conditions are included to make the accessibility cost-effective or availability of the materials at such a price that does not exceed the cost of production and to promote the overall growth and development of such print-disabled persons.

VII.

Conclusion

Access to knowledge and education is the basic fundamental right of every individual including person with any disability also. It becomes very much difficult for the people to actively participate in social, political, and economic activities if they do not have access to essential information. It becomes more important in case of persons with disability or in case of visually impaired persons. Our current legal system is not appropriate enough to ensure this basic right appropriately till date. The global copyright discourse has been predominantly shaped by international content industries, which has often marginalized disability rights by its restricted limitation and exceptions.

International conventions mandate the states to adopt flexible interpretations and work towards globally coordinated, systematic efforts to address the concern of book famine which possess significant barrier in the development of persons with disabilities. The Marrakesh Treaty establishes a framework for international cooperation by requiring signatories to implement a minimum baseline exception to ensure the availability of accessible copies of works. This Treaty is an important step forward to facilitate the cross-border flow of accessible books also, but still much more is needed in this regard as some developed jurisdictions are taking time to implement.

41. The Copyright Act 1957, Section 31.

42. *Id.*, Section 53.

43. This section validates the imports of single copy of the work by persons with visual impairments “for the private and domestic use of the importer” and exempts it from infringement.

This article explores several potential measures that need to be implemented to comply with the right to education, access to knowledge and employment benefits of the blind people. The important ones are flexible and uniform application of copyright exceptions, heavy investment in the digitisation of existing works, promotion of cross-border exchange of accessible works and to require the publishers or retailers of published or republished works to ensure the adequate availability in the open market. All are necessary to ensure the basic human rights like, access to knowledge, education, employment benefits of the print disabled persons which can be achieved by an international consensus to overcome the restricted limitations and exceptions of copyright.