

Social Inclusion and Role of Copyright Laws and Treaties for the Empowerment of Persons with visual impairment or otherwise Print Disability: An Overview

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ABSTRACT:

This article focuses on the Social inclusive features of Indian copyright law and Marrakesh Treaty for the empowerment of people with print disabilities. The features of copyright exception of Indian Copyright (Amendment) Act 2012 and International Marrakesh Treaty 2013 which facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled and make the society to become inclusive by facilitating the information resources available, accessible and usable by converting it into accessible formats such as Braille, large font, e-text, DAISY formats and audio formats et, without seeking the permission of right holders.

Keywords : Social Inclusion , Copyright law, Marrakesh Treaty, Print disability, visually impaired

1) INTRODUCTION

It is estimated that (WHO, 2014) 285 million people are visually impaired worldwide, in this 39 million are blind and 246 have low vision. In India the percentage of disabled people up by 22.4 % in 2001-2011 and the population of visually impaired is 18.8%. That is the population of people with disabilities is increasing rapidly. 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 per cent of information about their immediate environment by means of sight (Willetts, 1997), visually impaired people, therefore, and are at greatest risk of being socially excluded as a result of poor access to information. It is estimated that only 7% of published material are in accessible form for the people with print disabilities and it is about 1% 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 is to bring this community to the main stream by making the information and resources available and accessible to them. In keeping these fundamental objectives of social inclusion and human right issues the Treaty of Marrakesh and Indian Copyright amendment act 2012 were formulated. It is truly a balanced one for the empowerment of people with print disabilities or visually impairment.

1.1 Print Disability and Visually Impairment

The term print disabled encompasses persons who cannot access print resources. The term print disabled is coined by George Kerscher (around 1988-1989). The term 'print disability' is commonly used to defined as "A person who cannot effectively read print because of a visual, physical, perceptual, developmental, cognitive, or learning disability and includes any natural person who is blind or has an impairment of visual function that cannot be improved by the use of corrective lenses to a level normally acceptable for reading without as special level or kind of light; or is unable, through physical disability, to focus or move his or her eyes to an extent acceptable for reading; or a person suffering from dyslexia.

1.2 Social Inclusion

Inclusion is the act of including; the state of being included (Merriam – Webster, 2013). The term 'inclusion' is used in a variety of contexts, chiefly with reference to 'social inclusion' and 'inclusive education'. 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. In order to enable equal participation, effective information practices that make available everyday and nuanced information that constitute elements of the information landscape need to be accessed and understood (Kennan, Lloyd, Qayyum, & Thompson, 2011).

The Availability, accessibility and usability of information resources and services are the three major factors of social inclusion. The unbiased assurance of these three factors makes a society an inclusive one. The availability, accessibility and usability dilemma includes the restricted copyright laws, technology, market conditions and inaccessible environmental conditions which are focussed on the majority population etc. Access to the unbiased information is considered as the major human right issue and it is the responsibility of the society to make it in inclusive manner. This article focuses on the inclusive features of Indian copyright law and Marrakesh Treaty for the benefit of person with print disabilities.

2 NEED AND IMPORTANCE OF INCLUSIVE COPYRIGHT LAWS AND TREATY

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, rights of reproduction, communication to the public, adaptation and translation of the work. Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Copyright, like other kinds of intellectual property rights, is basically limited in time, scope as well as exercise. From earliest times in copyright history, it has been recognized that copyright does not continue indefinitely, does not apply to certain categories of material and, in certain cases, is limited in its exercise (Lung, 2004). The availability of copyrighted materials to every citizen of the nation cannot be assured by the protective nature of the copyright law. The human right of persons with disabilities are concerned with the equal access to information. The increasing population of persons with disabilities and lack of provision to facilitate the need of this marginalized group are of great concern.

- It is estimated (WHO) that the 90% of the blind people are of low income and they are living in developing countries
- Only 7% of published works are available in accessible formats throughout the world and in India it is less than 1%
- It is believed that only 5% of accessible works are produced with copyright license or with the permission of copyright holder.

These statistics give a clear picture of marginalizing nature of the society toward the people with print disabilities or visual impairment.

3. INCLUSIVE FEATURE OF INDIAN COPYRIGHT LAW

The history of Indian Copyright law begins with the British rule. The Copyright Act 1957 was the first post-independence copyright legislation in India and this law has been amended six times since 1957, such as in the years 1983, 1984, 1992, 1994, 1999 and 2012 to meet with the national and international requirements. The most recent amendment was in the year 2012, through the Copyright (Amendment) Act 2012. As far as the normal person is considered exceptions to copyright infringement in India is limited to the purpose of research or private study, for criticism or review, for reporting current events, in connection with judicial proceeding, performance by an amateur club or society if the performance is

given to a non-paying audience, and in the making of sound recordings of literary, dramatic or musical works under certain conditions.

Copyright laws are always about the protection the work of the authors with a limited concept of fair use and it lags in the feature of reaching all. Indian Copy right Act 1957 does not contain any rules regarding the conversion of print material to any kind of accessible format for the visually impaired or print disabled. The section 52 of copyright act 1957 provides certain provision which would not constitute an infringement of copyright namely fair dealing. The term fair dealing is not defined in the act. Fair dealing is the legal doctrine which allows a person to use the copyrighted materials without the permission of the owner of the work in a limited manner and not the whole work. The section deals limited use of copyrighted materials including literary, dramatic musical or artistic work but it does not include the computer program for the purpose of private use and research. But this section does not have the inclusive nature to accommodate the human right issues of unbiased and equal access to the information for the person with disabilities. By considering massive request and demand from the disabled people and supporters to overcome these barriers to reach the information to all the Copyright Amendment Bill 2012 was passed by Rajya Sabha on 17th may 2012 and by Lok Sabha on 22nd May 2012 with a special section (52(1) (zb) and it is considered as an important step taken by the government of India to make the country inclusive for the disabled people .

The Amendment to Indian copyright Law (52(1) (zb) has created a new copyright exception for the benefit of persons with print disabilities, including persons with visual impairment and dyslexia, it allows the person or who engaged in supporting the person with disabilities to modify or convert a document in any accessible format to meet the specific requirements of the person with disabilities .Now the law permit to convert a standard printed book to alternative formats including Braille, large font, text, DAISY formats, audio without seeking the permission of right holders. This provision is very wide and inclusive in its scope. It is the obligation and responsibility of the person or organization that are using or providing such service is to ensure that the converted accessible copies are not entering the mainstream business. The amendment act also added with a section 31B, which gives the permission to the person or organization who is work for the benefit of the disabled to produce the copyrighted materials in any of the accessible format on a profit basis on or after getting the licence from the copyright board. In short the section 52(1) (zb) and 31B of Copyright Amendment Act 2012 proves the inclusive nature of Indian copyright Act.

4 SOCIAL INCLUSIONS: AN INTERNATIONAL VIEW

The need to maintain a balance in copyright law between the interests of rights holders and the broader public interest is a longstanding principle in the international copyright system. The statistics shows that majority of the current literature is produced in developed countries and the availability of this literature is not at its best for the developing countries like India. The barriers experienced by blind, visually impaired and other reading disabled persons in accessing copyrighted works reflect an imbalance that needs to be addressed in order to equalize possibilities for all people to read copyrighted works. Every treaty contains reservation of certain reproduction facilities in order to avoid abuse. There are five major multilateral International Copyright Treaties which are recognised as the important treaties accepted internationally , they are Berne Convention 1886 (Berne Convention for the Protection of Literary and Artistic Works) same was later modified at Paris 1972 , Universal Copyright Convention 1952 at Geneva by UNESCO, Universal copy right convention in 1971 Paris by UNESCO , TRIPS 1994 Agreement on Trade Related Aspects of Intellectual Property Rights by World Trade Organization (WTO) and WIPO copy right Treaty 1996 by the member states of the World Intellectual Property Organization (WIPO). None of the above international treaty grants absolute right to any individual and does not address the problem faced by the person with print disabilities or visually impairment.

To end this information deprivation of person with print disabilities, hundreds of negotiators from throughout the world gathered together at Marrakesh hosted by WIPO to discuss the issue and challenges and responsibility of the society to make the concept of information for all concluded with the Treaty at Marrakesh. United Nations Standard Rules on the Equalization of Opportunities (1993) , United Nation Convention on the Rights of Persons with Disabilities (CRPD) 2007

and Marrakesh Treaty 2013 which are considered as the important international steps towards making the society inclusive for the people with disabilities. Marrakesh, an international treaty that ensures visually impaired people to have easier access to books, unanimously adopted by member states of the UN's World Intellectual Property Organization (WIPO). The treaty was adopted by representatives from WIPO's 186 member states including India at "The Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled" on June 28, 2013 and it became the part of body of international copyright treaties administrated by WIPO. India officially signed the treaty on April 30, 2014 and ratified the treaty on 24 July 2014 and was the first country to do so. As of now (19th March2016) 82 countries have signed and 15 Countries ratified or accessioned the treaty. The treaty will come in force only after 3rd month of ratification by 20 eligible countries. So as of now the treaty is not in force.

4.1 Inclusive feature of Marrakesh Treaty

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled has given a clear humanitarian and social development dimension and its main goal is to create a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired and otherwise print disabled. The concept of inclusiveness deals with the accessing of the information and facility to the persons with disabilities. Inclusion is about three concept availability, accessibility and usability. Availability is about making the resources and environment available to the person with disabilities. Harrod's glossary defines access as "a device or method whereby a document may be found" (Harrod's Librarian's Glossary and Reference Book, 1990) usability deals with the satisfactory use of available resources and service to make the user informed about a particular task.

- Article 2 Definitions, of the treaty can be discussed on the basis of availability and accessibility of the resources. Article2(a) clearly describes the types of materials by the word 'work' . "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. 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 Beneficiary Persons, is about whom the treaty is about; in brief it is about the persons with print disabilities. By giving 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 National Law Limitations and Exceptions Regarding Accessible Format Copies, emphasises on the responsibility and obligation of the nations. The concept of inclusive nation can be discussed on the basis of this article. Its requires countries to 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. The article emphasises on the importance of amendment of national copyright laws to accommodate the Marrakesh treaty by the concerned nation.
- Article 5, Article 6 Cross-Border Exchange of Accessible Format Copies and Importation of Accessible Format Copies ensure 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. Inclusive world is possible by sharing resources at international level. The responsibility of social inclusion is ensure by these articles. Article 5(1) provides that a country must permit an authorized entity to send (export) an accessible format copy made under an exception to an authorized entity in another country, or directly to a beneficiary person in another country, where the Article 6 obligates countries to allow authorized entities or beneficiary persons to receive (import)

accessible format copies from other countries. Social Inclusion can be achieved only through the mutual coordination and co-operation at International level through resource sharing and the concept is assured through this article.

- Article 7 Obligations Concerning Technological Measures, 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, for example, the provision of key to open Digital lock of protected material. These types of locked resources must also be made available to the disabled without any bias. Unlocking of digital lock on e-books such as Kindle book or iBook with digital right management becomes lawful for the benefit of people with Print disabilities.
- Article 8 - Respect for Privacy, 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- Cooperation to Facilitate Cross-Border Exchange, facilitate with importance and assurance of privacy and co-operation for cross-border exchange. The maximum utilisation of resources and duplication of work can be avoided by the proper co-operation between the countries. This also facilitates the need of an information access point for this purpose, 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 authorized entities like libraries and NGOs are now able to exchange the resources for the benefit of disabled and duplication of production of same accessible can be avoided to a better extent.

The Marrakesh Treaty is the first international treaty which is devoted to building an inclusive society which is capable of including the persons with print disabilities. Each and every article in the treaty has its own merit as far as the inclusive society is considered. The treaty has the 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.

5 CONCLUSION

It is the time to move from special to inclusive, that is special services to inclusive service. The mode of operation of the society should be changed into an accessible mode which will encourage the marginalised group of people with disabilities to come up to the main stream of the society. The unbiased availability, accessibility and usability of information should be ensured by the society with the protection of law, which is the need of the hour. The need of Inclusive world through inclusive society has been discussed in the light of Indian Copyright (Amendment) Act 2012 and Marrakesh treaty 2013. Information explosion and advancement in Information and Communication Technology paved way for making the society to an accessible one with respect to the people with disabilities. Marrakesh Treaty is the landmark of Challenged persons' crying demand for reading the information materials in suitable and accessible format at international level. India is moving forward with its Copyright amendment Law 2012. The transition of inclusive society to inclusive nation and ultimately to inclusive world can be materialised by the amendment of national copyright laws and implementation of Marrakesh Treaty by all nations for the benefit of persons with print disabilities.

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