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## **ABOUT US**

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# **“ACCESS TO KNOWLEDGE TO THE VISUALLY IMPAIRED: IN THE LIGHT OF MARRAKESH TREATY”**

Authored By - Mohd Arsh Khan

*“Millions of people in the world who are blind or visually impaired will be able to read books in accessible formats” – Stevie Wonder*

## **ABSTRACT**

*The research carried out is purely doctrinal in nature and can be categorized as the socio-legal research as it addressed the need of including disabled persons in the realm of education, knowledge and information, by providing them access to published work, so that they too can form opinions and participate effectively in the development of society. This research work revolves around the benefits unleashed by the Marrakesh Treaty for the blind, visually impaired or print disabled persons. The primary aim has been to emphasize on striking the balance between the rights of the author and the larger public interest, particularly, when it comes to providing access to knowledge and information to the persons with disabilities, on a non-commercial basis. The author has shed light on the humanitarian aspects of the Marrakesh Treaty as the treaty has been instrumental in bridging the gap between knowledge and disabled persons, by making it feasible to provide the published work in alternative format to the actual beneficiaries. This paper lucidly highlights the scenario, such as Book Famine that eventually led to the formation of Marrakesh Treaty. The tremendous and distinguished role of India too, in empowering the persons with disabilities has been discussed vastly in this paper. The author concludes the research by stressing upon inclusiveness and social enrichment as these are the basic foundations on which the edifice of Marrakesh Treaty rests upon.*

**Keywords:** Marrakesh Treaty, Book Famine, Three-step test

## (I) INTRODUCTION –

Globally, at least **2.2 billion people** have a near or distance vision impairment. In at least one billion or almost half of these cases, vision impairment could have been prevented or yet to be addressed. The leading causes of vision impairment are uncorrected refractive errors and cataracts. The majority of the people with vision impairment are over the age of fifty years, although vision loss can affect people of all the ages.<sup>1</sup>

Access to knowledge, books and other sources of information is an integral part of our lives. Every person is equally entitled to have an access to the published work that would lead to inclusiveness in the society, the greater participation of the people; equal opportunity for all, making the published work accessible to all without any discrimination would empower the people by helping them to make their own rational and well informed decision. However, in this rapid race of getting an access to knowledge or information, a particular section of people were lagging behind, i.e. **blind, visually impaired or print disabled persons** were somewhere getting deprived of adequate amount of knowledge. Prior to the popularity of electronic texts, the print disabled persons had to go through the colossal problems in order to procure the material in an accessible format, as this process was time taking and the publishers were not willing to provide electronic copies of articles and books. In the absence of electronic copies, permission was required to be sought to scan printed text into a digital form that could further be converted into audio or Braille. Technologies like Braille have been too costly to create a burden on visually impaired persons.<sup>2</sup>

Copyright law provides the mechanism for protection of the rights of the author but this very law also lays stress on striking a balance between the protection of rights of author and the larger public interest, specifically, education, research and access to information, and such a balance must facilitate effective and timely access to works for the benefit of persons with visual impairments or print disabilities. The Utilitarianism principle of copyright law does not confer unbridled powers to the author rather it restrains the monopoly the author has over his work.

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<sup>1</sup> World Health Organisation, “*Blindness and vision impairment*”, Newsroom, October 14, 2021, available at: <https://www.who.int/news-room/fact-sheets/detail/blindness-and-visual-impairment> (last visited on March 1, 2022)

<sup>2</sup> Abhimanyu Yadav, “*Persons with disability: right to access knowledge(including copyrighted material)*”, iPleaders

Taking into consideration the challenges that unfortunately became impediment in the overall development of the personality of the *blind , visually impaired or print disabled persons* , which are prejudicial to their freedom of expression , including the freedom to seek , receive and impart information and ideas of all kinds on an equal footing with others, including all forms of communication of their choice, their enjoyment of the right to education , and the opportunity to conduct research<sup>3</sup> , The *Marrakesh Treaty* came into the picture.

## (II) MARRAKESH TREATY –

Marrakesh Treaty has become instrumental in making an access simpler to published works for persons who are blind, visually impaired or print disabled .The Treaty was adopted by the member states of the **World Intellectual Property Organisation** on **June 27, 2013** and the Treaty entered onto force **on September 30, 2016**.

The Marrakesh treaty has made it mandatory for the contracting member nations to incorporate in their national copyright law, a limitation or exception, in consonance with WIPO Copyright Treaty, to make availability of work easier in accessible format to the beneficiary persons and such limitation or exception should allow the changes that are required to make the work accessible in the alternative format. The idea of providing limitation or exception is based on the idea of inclusion. The right subject to such limitation or exception are Right of Reproduction, right of distribution, and the right of making available to the public.<sup>4</sup> It is the discretion of contracting parties to provide for limitation or exception to the right of public performance as well to facilitate access to work for beneficiary persons.

The Treaty has defined the beneficiary persons as a person who is a blind, suffering from visual impairment or reading disability, or anyone who is not able to read a book normally due to the physical disability.<sup>5</sup>

All WIPO member states are qualified to become party to Marrakesh Treaty. To become a member, a state must deposit an instrument signifying its intention with the Director General of WIPO. It's pertinent to note here that *India became the first country to deposit an*

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<sup>3</sup> Marrakesh Treaty , *Preamble*

<sup>4</sup> Marrakesh Treaty , *art.4*

<sup>5</sup> Marrakesh Treaty , *art.3*

*instrument of ratification.*

Under the treaty, organisations that have been catering to the needs of beneficiary persons are termed as “**Authorised Entity**”. Such entity has been defined as an entity that is authorised and acknowledged by the government to impart education, instructional training, information access to beneficiary persons on a non – commercial basis, It encompasses both government institution and non-profit organisation rendering the same services to the beneficiary person as one of its primary objective.

Such organisations play crucially important role in providing persons who are blind or visually impaired with an access to alternative format materials. The Marrakesh treaty has categorically acknowledged the role of authorised entities by carving out some exceptions that make the functioning of such organisations flexible so that they can play their roles better in facilitating the needs of their beneficiaries.<sup>6</sup>

Authorised Entities have the duty to establish and follow their own practises in several areas. . It must ensure that the persons they are serving are beneficiaries, It must serve exclusively to the beneficiary persons and should discourage the unauthorised use of copies and must maintain “due care “in handling copies of works.<sup>7</sup>

As discussed above, contracting parties shall inculcate in its national law some limitation or an exception for certain rights , so that such limitation or exception provides certain amount of flexibility to the authorised entities , like a limitation or exception that –

The authorised entity does not require the authorisation of right holder and the entity shall be allowed to either itself make an accessible format copy of the work or to obtain from another authorised entity an accessible format copy of work and provide those copies to beneficiary persons on a non-profit basis , or by electronic communication ( both wire and wireless means ) , It can take further appropriate steps to achieve such objectives , provided- the authorised entity engaging in such activity has lawful access to that work , No such changes should be made other than the changes required to make the work accessible to the beneficiary persons ,

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<sup>6</sup> Ibid , art.4(2)(a)

<sup>7</sup> World Intellectual Property Organisation , “*Summary of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled(MVT)(2013)* , available at: [https://www.wipo.int/treaties/en/ip/marrakesh/summary\\_marrakesh.html](https://www.wipo.int/treaties/en/ip/marrakesh/summary_marrakesh.html) (last visited on March 1, 2022)

such accessible format copies are supplied exclusively to the beneficiary and that too on a non-commercial basis.<sup>8</sup>

### **(A.) Cross border exchange of accessible format copies –**

**Exportation** - If an accessible format copy falls within the ambit of limitation or exception then it becomes mandatory for the Contracting member state to provide under the limitation or exception that authorised entity may distribute or make available , an accessible format copy , to a beneficiary person or authorised entity in another Contracting member state , for the exclusive use of beneficiary persons , and that the authorised entity shall be allowed to do so , again without seeking permission from the copyright holder , provided , that before distributing or making it available the entity was not aware or did not have the reasonable grounds to know that such alternate copies would be used for other than the beneficiary persons.

**Importation** – The contracting party’s national law, if allows, the beneficiary person or anyone acting on his behalf or an authorised entity, to a certain extent, to make an accessible alternate copy of the work, then it shall also permit them to make an importation of an accessible format copy, without the authorization of the right holder, for the benefit of beneficiary persons.

This would help to prevent the duplication of transcription efforts in different countries, and would pave the way for those with larger collection of accessible books to share it with beneficiaries in countries that have dearth of resources.<sup>9</sup>

## **(III) WHAT LED TO THE FORMATION OF MARRAKESH TREATY?**

Before determining the circumstances that existed before the Marrakesh treaty came to place and why actually the need was felt to make such treaty, we need to go deeper into the concept of *Book Famine*.

**Book Famine** – The term “Famine” insinuates the fact that only 10 percent of the books and

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<sup>8</sup> Supra note 6

<sup>9</sup> Id , art.5

educational materials in developed countries and less than 1 percent in developing countries are made into accessible formats, such as Braille or audio books.

To an utter shock, this giant issue of Book Famine was so serious that it must have hampered the opportunity in myriad ways for the visually impaired persons. This problem had created a huge gap between the visually impaired people and the knowledge and education that they deserve to get, on an equal basis, with all others. To combat the problem of Book Famine, The Marrakesh treaty was formulated

*Marrakesh Treaty has played a vital role in bridging the gap between the knowledge and the beneficiaries.* The Treaty has been brought to the table to eradicate the problem of Book Famine. The primary objective of Marrakesh treaty is do away with the problem of Book Famine.

#### **(IV) SCENARIO PRIOR TO MARRAKESH TREATY –**

Following the period of two hundred years ago, when a Frenchman, Louis Braille, first discovered the Braille as a system of reading and writing with an aim to provide aid to blind persons to get an access to information, the United Nations (UN) systems through UNESCO and World Intellectual Property Organization (WIPO) presented a report that dealt with the requirements of blind persons relating to access to information. This report impelled the need for an International Treaty to enable the production and distribution of accessible formats. In regard to this, a Workshop was conducted in Washington and was attended by many participants including government representatives, academic experts, sectors dealing with the blind across the world, to draft a treaty which required the limitation and exceptions to be embedded in the National Copyright Law and international cross border permission to distribute information in accessible format. This was duly drafted<sup>10</sup>

Before the treaty, one could not access the information from other countries in a format suitable

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<sup>10</sup> National Council for Disability (NCD) ,”*Statement on the Right to Read Campaign for Visually Impaired Persons in Africa, During the Conference on Creativity and Access to knowledge: A Social and Economic Impetus for Africa*”, page 4, organised by the **World Intellectual Property Organisation(WIPO)** on March 27, 2015

for blind persons. This situation led to reproduce what was already in place at extra cost because sharing such material was blocked by the copyright jurisdiction. The treaty, therefore, recognized the legitimate commercial interest of the publishers who have that as a source of their income and put forth the argument that No one is injuring the publishers because they are not publishing it in an accessible formats for blind persons, or It can also be said that the target population of the publishers does not include blind which would by no means reduce their profits if the Treaty holds.

The Governments of Ecuador, Brazil and Paraguay presented this treaty on behalf of the World Blind Union (WBU) in May 2009 at a meeting of WIPO. Later in June 2013, it was approved at Marrakesh in Morocco as a treaty during a Diplomatic Conference, hence the **Marrakesh Treaty**.<sup>11</sup>

## **(V) SCOPE OF EXCEPTION PROVIDED BY MARRAKESH TREATY**

There are many countries which provide exception that are wider than the one provided by the Marrakesh Treaty. *It must be noted that the Treaty does not cover the problems of every person with disabilities*, but, In India, Indian Copyright Act permits for exception that addresses the issues of all the disabilities that need the alternate format to access the work.<sup>12</sup>

## **(VI) CONVENTION ON RIGHTS OF PERSONS WITH DISABILITIES**

CRPD (Convention on Rights of Persons with Disabilities) has laid a lot emphasis on upliftment of the persons with disabilities and to bring such persons on equal footing with the other members of the society, so that they can take part on equal basis with others in the cultural life. The Convention has made it mandatory for its State parties to take certain steps for providing opportunity to the persons with disabilities in the field of art creativity , mainstream sports and other such cultural activities , so that , such persons would be able to contribute with

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<sup>11</sup> Ibid , page 5

<sup>12</sup> Supra note 2

others in the enrichment of society.<sup>13</sup> It has made it compulsory for the State to ensure that the Laws guarding the Intellectual property does not end up becoming the hurdles to access by the persons with disabilities to the cultural materials.<sup>14</sup>

The CRPD (Convention on Rights of Persons with Disabilities) committee has put in a lot of efforts to call upon the states to implement the Marrakesh Treaty.

## (VII) THREE-STEPS TEST:<sup>15</sup>

The Treaty has given this liberty to the Contracting Parties to execute the treaty's provisions taking into consideration their own domestic legal systems and practices, on the condition that they act in consonance with the three – step test obligations under other treaties. The mention of three – steps test can be found in *Berne Convention*. The three – step test is a basic principle used to ascertain, whether or not an exception or limitation is in line with the International norms on copyright and related rights. It has three components:

- Shall cover only certain special cases
- Shall not conflict with normal exploitation of work
- Shall not unreasonably prejudice the legitimate interests of the right holder.

Authorised entities is not allowed to effect the cross border transfers, unless the Contracting party in which the copy is made is a party to WIPO Copyright Treaty or otherwise applies the three – step test to limitations and exceptions implementing the treaty. Although, contracting parties that receive accessible format copies and is not under an obligation to apply the three – step test, must make sure that accessible format copies are not redistributed outside their jurisdictions.

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<sup>13</sup> UN Convention on Rights of Persons with Disabilities, art.30

<sup>14</sup> Ibid, art.30(3)

<sup>15</sup> Berne Convention, art.9(2)

## (VIII) INDIA'S ROLE IN EMPOWERING THE DISABLED PERSONS<sup>16</sup>

India's role can be highlighted by the fact that –“*India became the first country to ratify the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired or Otherwise Print Disabled Persons, 2013.*”

The situation in India prior to 2012 was not much inclined in favour of visually impaired persons. Before 2012, Indian Copyrights Act, 1957 was not suffice to guard the interests of the blind, visually impaired and persons with print disability. Copyright laws in India, prior to 2012 amendment, was stringently impeding the access of persons with disabilities as the owner of the copyright used to possess an exclusive right over his work and due to this any conversion of a book into an accessible format for the use of visually impaired persons was construed as a copyright violation unless it was undertaken by the copyright owner or with the authorization of copyright owner.

The Copyright Amendment Act, 2012 in India eased the restrictions to seek the permission of authors for converting their books into accessible formats. Post the 2012 Amendment, limitation and exceptions were included in the following provisions:

**section 52(1)(zb):** There are a few exception under which copyrighted work can be used, copied or reproduced without procuring the permission of the copyright owner. This section enumerates such exceptions to copyright violation and allows individuals, educational establishments and non-profit organisations to reproduce the copyright protected work in alternative formats for the use of disabled persons and up to this extent, it would not be construed as copyright violation, if an individual or an organisation, working for the benefit of disabled persons, on a non-commercial basis creates accessible format copies for persons with disabilities.

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<sup>16</sup> SELVAM & SELVAM , AN INTELLECTUAL PROPERTY LAW FIRM ,”*Disability Exceptions in Copyright*” by Editorial Staff , March 7,2016 , available at: <https://selvams.com/blog/disability-exceptions-copyright/> (last visited on March 3,2022)

## (IX) CONCLUSION:

It can be concluded on an inspiring note that – “*Disability does not amount to Inability*” which means a person’s ability has got nothing to do with his disability, an ability of a person can be gauged by his unwavering willpower to learn and someone’s disability should in no way be allowed to strangulate desire to learn, on an equal footing with other members of the society and these words have been proved to be true by the Marrakesh Treaty.

Marrakesh Treaty brought with itself a glimmer of hope for the visually impaired people who were getting deprived of knowledge and information. The treaty reflects the humanitarian aspects and fosters the social enrichment as it is inclusive; it has wiped out the discriminatory barriers that were stopping the visually impaired people to participate on an equal basis with others. Over the years, more and more countries have poured in their supports by depositing an instrument of ratification.

***We hope that education reaches to all regardless of any disabilities!***



