

The Indian Constitution And The Rights of Persons With Print Impairment



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Persons with Print Impairment refer to all persons with any form of disability whatsoever, who are unable to access material in printed form as comfortably, flexibly and conveniently as persons without any disability. Persons with Disabilities is a broader term for persons with any form of disability whatsoever, who are unable to access any material in its normal form (whether in print or otherwise, such as, cinematographic works, audiovisual works, etc.) as comfortably, flexibly and conveniently as persons without any disability (for instance, persons with hearing impairment). All Persons with Print Impairment are necessarily Persons with Disabilities although the converse is not true.

The Indian Constitution expressly provides for the right to equality (Article 14), right to non-discrimination (Article 15), right to freedom of speech and expression (Article 19) and the right to life (Article 21). Indian courts have routinely upheld the rights of persons with disability and the Supreme Court of India has specifically recognized that the "right to life" as enshrined in Article 21 of the Constitution includes right to dignity which includes basic necessities such as reading and writing. The right to education has also been recognized as a fundamental right. This paper argues that the need for a provision in Indian copyright law for exceptions to exclusive rights of copyright holders, for the benefit of print impaired persons arises out of the state's obligation to grant them access to exercise their rights and to enable them to partake of their entitlements.

Article 14 - Right to Equality

Article 14 of the Constitution of India

guarantees the right to equality as a fundamental right for all its citizens. Article 14 provides that within the territory of India the State shall not deny equality to any person before the law or the equal protection of the laws. This is similar to the concept of equality enshrined in Article 17 of the Universal Declaration Human Rights, 1948, which declares that all are equal before the law and are entitled to equal protection of laws without any discrimination. "Person" includes every citizen of India including persons with disabilities. Article 14 also requires the State to take affirmative action to eliminate existing inequalities due to reasons of caste, religion, social and economic status and even disability. Any affirmative action, even while it is discriminatory would not be invalid if it is in aid of all persons attaining equality. Failure on part of the State to enact laws which provide for empowerment of persons with disabilities to enjoy their basic rights on equal terms with other persons is, in fact, violative of Article 14 of the Constitution since such failure amounts to discrimination of persons with disabilities.

Article 15 - Right to Non-Discrimination

Article 15(1) of the Constitution guarantees that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them. However, Articles 15(3) and 15(4) constitute exceptions to the same while providing for the State to create exceptions or special provisions in favour of women, children and for the advancement of any socially and educationally backward classes of citizens. The right to equality under Article 14 read with the

right to non-discrimination under Article 15 and the provision for special measures in favour of the backward classes under Articles 15(3) and 15(4) make out a strong case for provision of special measures in favour of persons with disabilities. The right to equality on the grounds of disability is not explicitly provided for in the Constitution. However, there have been significant strides taken to promote and realize equality for disabled persons. Article 19(1)(a) - Right to Freedom of Speech and Expression

Every citizen of India is guaranteed the right to freedom of speech and expression under Article 19(1) (a) of the Constitution which are subject to certain reasonable restrictions which may be placed on it as given under Article 19(2). Any restriction which goes beyond the framework of Article 19(2) on the right to freedom of speech and expression is invalid.

In modern constitutional democracies for any citizen the print medium is a powerful tool for dissemination and receipt of information. Thus, access to printed material is crucial for satisfaction of a person's right to freedom of speech and expression guaranteed to him under the Constitution. Therefore, it is an obligation on part of the State to ensure that adequate provisions are made in the law enabling persons with print impairment to access printed material in accessible formats. Article 21 - Right to Life and Personal Liberty

The Constitution of India guarantees to all its citizens the right to life and personal liberty under Article 21. According to which "No person shall be deprived of his life and personal liberty except according to procedure established by law." The Supreme Court emphasized that the right to life under Article 21 must guarantee to every citizen something beyond just the life of an animal i.e. "suitable accommodation which allows him to grow in all aspects, viz., physical, mental and intellectual."

The Right of Children to Free and Compul-

sory Education Act, 2009

The Parliament recently enacted the Right of Children to Free and Compulsory Education Act, 2009 (Education Act) for the purpose of providing free and compulsory education to children between the age of six and fourteen years. With the enactment of this law, the State has given effect to the fundamental right of the children to obtain free and compulsory education from the State as enshrined in Article 21A of the Constitution. Article 21A provides that "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." The 86th amendment further inserted Article 51A(k) making it a fundamental duty on part of a "parent or guardian to provide opportunities for education to his child or, as the case may be, between the age of six and fourteen years."

The Persons with Disabilities Act, 1995

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act was passed by the Union Parliament in 1995 and this marked focus on the need for eliminating all barriers to full participation of disabled persons in the society. The Act incorporates for the disabled persons the provisions for non-discrimination and affirmative action in education and employment. Chapter V of the Act which deals with education lays down that every child below 18 years of age be provided with free education in an appropriate environment. Section 27 of the Act requires the Government to provide disabled children, free access to special books and equipments needed for his education. Needless to mention "Special books" must be in accessible formats in order for print impaired students to use it. The Act demands that equal opportunities in education be granted to disabled children and Section 28 calls for initiation of research for the purposes of designing and developing assistive

devices, teaching aids, special teaching materials and other items for this purpose.

In light of the same, the Government is obliged under the provisions of the Act to ensure that all research and teaching material including books for children's education are available to print impaired children in accessible formats, free of cost. In fact, local bodies and government authorities are required to promote and sponsor research for the development of assistive devices under Section 48 of the Act. Thus, the law requires the government to not only provide materials in accessible formats to the print impaired but also actively assist in development of technology for conversion of materials into accessible formats. This is, in fact, consistent with the larger mandate of the Act to provide a life of dignity, a healthy standard of living, assistive facilities and an enabling environment to disabled persons as a matter of right and as a matter of ensuring availability of equal opportunities to them. It must be noted that, even while the Act calls for dismantling "environmental barriers" and for such purpose, seeks to provide access to information in accessible format, it does not expressly mention access to information and communications technology. However, it is undeniable that such access is a necessary condition in today's day and age to ensure equal opportunities for disabled persons in education and employment. Thus, an amendment of the copyright law providing for access to printed material to the print impaired in accessible formats covers this gap ensuring that the Act is enforced effectively and the purpose of the Act is safeguarded.

National Policy for Persons with Disabilities, 2006

Apart from legislations and constitutional provisions, a study of the national policy documents demonstrates the vision and commitment of the Indian Government in guaran-

teeing a life of dignity and freedom to disabled persons in India at par with other citizens. The National Policy for Persons with Disabilities (Policy) formulated by the Ministry of Social Justice and Empowerment in 2006 lays down the commitment of the government in providing disabled persons, access to education and to a barrier-free environment for their development. The Government has also assured incentives to expand facilities for setting up e-libraries, Braille-libraries and talking books libraries. The Government has also promised provision of financial support by public sector banks to private, public and joint sector enterprises involved in the manufacture of high tech assistive devices for persons with disabilities.

The Policy talks of creation of a barrier-free environment for persons with disabilities for the achievement of which, several strategies would be adopted including meeting communication needs of persons with disabilities by making information service and public documents accessible to them. For this purpose, the Policy expressly provides for use of "Braille, tape-service, large print and other appropriate technologies." such a commitment would imply that the Government would strive to provide for technologies including digital or other technology required to convert printed material in formats accessible to print impaired persons. It is interesting to note that the Policy recognizes the NGO sector as an important institutional mechanism to provide affordable services complementing the efforts of the Government with regard to accessibility issues concerning disabled persons. It has been expressly mentioned in the Policy that exchange of information amongst NGOs would be encouraged and facilitated. This is a huge boost for efforts of several NGOs striving to provide access to print impaired persons of copyrighted material in accessible formats.

Eleventh five year plan

Eleventh Five-Year Plan (Plan) formulated by the Government provides for a right-based approach for disabled persons marking a shift in national policy from a welfare-based approach. The amendment of Indian copyright law to provide for access to print impaired persons of copyrighted material is of utmost necessity to enable the policy objectives of the Government in providing for access by disabled persons to fundamental freedom, education and information. The Eleventh Five-Year Plan consistent with the objectives of the Policy formulated by the Government provides for a right-based approach for disabled persons marking a shift in national policy from a welfare-based approach. Provision for accessibility is one of the eight basic principles on basis of which Chapter 6 (Social Justice) is formulated. The Plan recognizes that there is an "urgent need" to review all legislations pertaining to disability and to amend them to make them consistent with the Convention.

This is a welcome provision which automatically makes way for amendment of the Indian

Copyright Act which is, in its current form, directly restricting the access of print impaired persons to materials in accessible format. The Plan also suggests that interventions by the Government in the area of providing accessibility to disabled persons would include provision of access to information to such persons in all its forms. The Plan specifically ensures "development of disabled-friendly curricula". Thus, printed material which is converted to format accessible by print impaired persons would naturally be covered under the scope of the Plan. In light of the same, in order to bring it into action, it is important for the Government to ensure that all legislative barriers which restrict, in any manner whatsoever, the access and exchange of information among persons with disabilities including print impaired persons. Thus, it is not only the need of the hour but also an obligation on part of the Government to amend the Indian Copyright Act to provide for conversion of copyrighted material into formats accessible by print impaired persons.

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