

“Facile Approach of Intellectual Property Rights for Physically Challenged Persons”

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Abstract

Intellectual Property Rights (IPR) are provided for the invention or creation of new things and for these person can apply for their “copyright, patent, trademark, industrial design, layout designs and a geographic indication of source”. The present work aims upon the “Facile Approach of Intellectual Property Rights to Physically Challenged Persons”. For the liberal approach of copying the data from internet sources especially for the print disabled persons a new amendment of 2012 to Copyright Act, came into force. The provisions with respect to information for physically challenged persons should be different so the rules regarding obtaining copyright or Patent for these people should be lower in cost and further, these are obtainable at a low price. In this paper researcher with the help of secondary methods which include the analysis of Indian Laws with the rules/regulations of already developed nations in respect to provisions related to IPR laws specially available for people who are suffering from some kind of physical problems not able as of normal people.

Keywords: *Physically Challenged Persons, Intellectual Property Rights, Access, International Laws and Policies.*

INTRODUCTION

The rights related to IPR are legal rights that could be claimed upon the creation of something new and those things have a commercial value. Innovations, paintings, songs, products, books, designs, etc. come under new creation. These varieties of rights are impalpable in the actual sense which means are not physically available and give a proper right over the new invention or creation. The importance of IPR was first recognized during the “Paris Convention” which is for providing a shield to “Industrial Property” and another convention known as the “Berne Convention” made for the safekeeping of “Literary and artistic works”. These conventions are commanded by “WIPO” (World Intellectual Property Organization) and India is also a member of this. The classifications of these rights are split into (i) Industrial Property (Patents, trademark, industrial designs, and graphical indications of source), and (ii) Copyright (Literary, artistic work, drawings, paintings, photography and architectural designs). IPR is a kind of right to property over the new creation. These rights are intangible in nature, which means untouchable or not in a physical capacity. Many organizations are set up at the International and National levels for providing these rights. At the international level organizations like “WTO (World Trade Organization), WIPO (World Intellectual Property

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Organization), *Paris Convention*, *Marrakesh Treaty*, etc., are set up and at the National level we have the *Patent Act 1970*, *Trade Mark Act 1999*, *The Designs Act 2000*, *The Geographical Indications of Goods Act 1999*, *Copyright Act, 1957*, *Property of Plant Varieties and Farmers Rights Act 2001*, *The Semi-Conductor Integrated Circuits Layout Designs Act 2000*, *Trade Secrets and Utility Models, etc*". There is still a lack of relaxation provisions for the above-said relief, which means this type of information is not available for persons suffering from some sought of physical challenges. This relaxation is only provided to them so that they can easily read or learn the data or information. Besides all these laws there are still shortcomings in IPR laws because these are not easily accessible and much costly and further the products, devices or their accessibility is also a cost. Because of their higher cost, these are not accessible for economically weaker people which include physically challenged persons, who are dependent upon others for their livelihood. So, there should be relaxation provisions upon the application of Copyright or Patent on products, and devices used for the physically challenged persons.ⁱ

INTERNATIONAL PERSPECTIVE OF INTELLECTUAL PROPERTY RIGHTS AND PHYSICALLY CHALLENGED PERSONS

At the International level, many treaties or conventions are made for the protection of IPR and easy access to these rights, for physically challenged persons. WIPO is a body, established in 1967 for the governance over the functioning of other organizations, treaties, and conventions made for the betterment of physically challenged persons. It has 193 member states, that are bound to follow the procedure and provisions laid down by this body. Separate bodies are set up for dealing with Patent, Copyright, Trademark, Designs, etc. Firstly the Paris convention was held in the year 1883 for the "*protection of Trade names, Industrial designs, for unfair competition and Indications of source*". As per this convention, juristic and natural persons can apply for the IPR and the same treatment is provided to them as a national of that country. At present this convention has 178 member countries and all work is administered by WIPO. Berne Convention was adopted in the year 1886 for the "*protection of artistic works and Literary*", which provides protection for new inventors like musicians, poets, authors, painters, etc. After this convention, Madrid Protocol came into effect in the year 1891, which gave the right to register trademarks at the international level in multiple jurisdictions.ⁱⁱ

WTO (World Trade Organization) is an organization that deals with the laws, and rules regarding the trade at international level and administrates the deals regarding trade between different member states. Any dispute regarding the trade is also solved by this organization.ⁱⁱⁱ

Marrakesh VIP Treaty was held in the year of 2013 for facilitating the published information or material for the people who have low vision and come under the category of "*visually impaired*". This treaty is an exception to the Copyright Act and provides a facility of free access to a new creation of books for Visually Impaired Persons. India is the first country who ratify this treaty in 2014 and instruments or devices used for visually impaired persons are deposited under this for free use.^{iv}

UNCRPD (United Nations Convention on Rights of Person with Disabilities) came into force in 2008 for protecting the rights of physically challenged persons by promoting their full participation in society, in education, and in employment fields. This can only be provided if we have built more opportunities for the people suffering of physical challenges. As per the provisions of this convention specially abled have same rights of education which means equal and compatible environment in schools, friendly behavior of teachers, separate and accessible services, same employment opportunities for them. Article 30 of this convention provides a right to physically challenged persons to participate in cultural life, recreation, leisure and sport, which means the right to access

cultural material, and enjoy TV programs, movies and other activities, which means they have right to enjoy cultural life, includes spending their leisure time through songs, books, movies, T.V shows etc., and this can be possible only when they have accessibility of the same. This can only be provided by the support of government and private organizations working in this field. As a member of UNCRPD India is also bound to provide these services to its specially abled people, but in actual sense most of the people not know about these. Clause 2 of this Article imposes a duty upon the states to take effective measures for safeguarding the interest of these persons qua to IPR so that they can access these rights without any discrimination.^v

NATIONAL PERSPECTIVE OF INTELLECTUAL PROPERTY RIGHTS AND PHYSICALLY CHALLENGED PERSONS

Intellectual Property Rights are a key driver for International trade between different countries. It covers- *"The Trade Mark Act 1999, Patent Act 1970 (amended in 2005), Copyright Act 1957, Industrial Design Act 2000, Geographical Indication of Goods Act 1999, Protection of Plant Varieties and Farmers Rights Act 2001 and Information Technology Act 2000"*. "TRIPS Agreement" connected Indian Laws with IPR. From all these IPR laws mostly used IPR for the registration of devices related to physically challenged persons are Patent and Copyright are as follows:

Patent Act 1970 (Amended 2005): This Act came into effect in 1970 and was also amended in the year 2005 for providing Patents upon the new creation. Applicants can get registered their devices or types of equipment under the Patent Act. This Act is divided into 24 chapters having 162 sections, which define the basic definition part, responsibilities of committees formed under this Act and their functioning/provisions. Section 2 (1)^{vi} of this Act defines the word "new invention", which means new invention not previously publicized in the public domain. Chapter IIIrd relates to the application process for a Patent, which includes its registration and application process. A patent is provided for 20 years by paying a fee and can be renewable after its expiration.

Copyright (CA) Act 1957: Indian Copyright Act came into effect in the year of 1957 (as amended in 1999) and was divided into 15 chapters with 79 sections. CA office was set up in India by the Union government and as per the directions of the government; the *"Registrar of Copyright"* controlled this office and did not act beyond his powers specified to him. His powers to his functions include maintenance of register which carry particulars regarding the names and addresses of artists/authors, their title to that specific creation/invention, etc. The Registrar appointed by the Central Government has certain powers, which include-

Maintaining the record related to the new licenses or licenses which are compulsory to register.

Conduct inquiries about the applications that come for registration.

Inquire about the matters related to copyright infringement cases.

And other acts necessary under the CA, 2012.

The separate board is also set up to inquire about the disputes qua to licenses and these proceedings are judicial in nature as court proceedings. The CA, 2012 includes, *"the exclusive right to communicate works by radio diffusion; the cinematograph was given a separate copyright"*. The copyright is given for 23-50 years and can be provided for up to 60 years for the different categories which are specified under the Act. The right to produce a translation of work was made coextensive with other rights arising out of copyright. The introduction to *"international copyright, the definition of infringement of copyright, assignment of ownership and licensing of copyright including compulsory licensing in certain circumstances, rights of broadcasting organizations, exceptions to the*

exclusive rights conferred upon the author or acts which do not constitute infringement, special rights of authors, civil and criminal remedies against infringement and remedies against groundless threats of legal proceedings" are also provided under the heads of this Act.

With the advancement of technology, devices and other types of equipment, the matter of safeguarding the copyright has also become a difficult task. Because the copyright is the same also at a universal level as many inventions are also registered worldwide so their violation can easily be done. Protection to different categories which come under the copyright is also provided under Section 2 of CA of 1957. Their legal interpretation is also changing according to the changing time then their shielding part is again due and in that situation, these categories are liable for the protection and these classifications are provided by the different inferior and superior courts of India. The following heads have come under copyright:

"Literacy works

Musical works

Dramatic works

Artistic work including sculpture, painting, engraving, architecture and all works where artistic craftsmanship is involved

Sound recording

Cinematograph film

Literary, dramatic works, or musical works in the form of computer programming

Creating unpublished works

Reproduction of work, Adaptation and Translation

Foreign works including the works of International Organization

Literary works include articles, poems, works of fiction, factual works such as encyclopedias as dictionaries, etc.

Research theses and dissertations prepared by students

Question papers set for the examination

Compilation of a book on household and accounts and domestic arithmetic

Guide books

Schools textbooks

Dictionary

A book of science questions and answers

Questionnaire for collecting statistical information

Lecture notes have all come under the class of literary works entitles to copyright protection

Head notes of a judgment

Musical work such as songs operas, instrumental music, etc.; Works of art and architecture

Technical drawings, photographs, motion pictures (Cinematograph film), computer programs, etc.

Live performance stored in a compact disk etc".^{vii}

RESULTS & FINDINGS

Intellectual Property Rights are available to all without any discrimination as per different laws enacted at the National and International levels. Many provisions are implemented in this regard and steps are also taken for the proper implementation of these. As per the laws no one should be discriminated while providing these rights and everyone has equal right to access these rights. India is a member state of many International Conventions and also a member of UNCRPD, which imposes duty upon the member states for the implementation of provisions and World Trade related treaties also cast duty of the same. But despite these laws, physically challenged persons face many difficulties while accessing these rights. Creator or inventors get Patents or Copyright for their creation because of their unique identity and also paid the relevant fee to get it registered. Some people are not a capacity to get the access to these devices or types of equipment because of their heavy cost and the relaxation in this, the government has to put measures to reduce the fee upon the things creates for the benefit of physically challenged persons, so that their cost would be reduced and these things would be approachable for them. Guide the people about these software and should start programs qua to the same, so that more and more people know about the usage of this. There are provisions at the national and international level for providing easy access to cultural material to physically challenged persons like playbooks, reading by audio devices, etc. One of the most used software is DAISY (Digital Accessible Information System), which offered assistance with an audio copy to readers who are not in a capacity to listen properly and for visually impaired persons. Navigational Capabilities are also provided by National library services, book share and recordings for visually impaired persons. Mr. Greg is a manager at Australian Association for blind persons for accessible media and provides usage of talking books. This association for blind persons has a collection of books from India, Canada, Sri Lanka and New Zealand, which requires DAISY software services like Daisy 2.02, Daisy 3 and EPUB. With this software, 3 types of daisy books are available:-

- i) Audio Only Daisy- Produces in the National Library of US and provides recordings of books for readers/users.
- ii) Text Only Daisy- Provides facility of text to speech.
- iii) Cadillac- Provides both text and audiobooks.^{viii}

DAISY Reader of India needs other software like for computer it needs (a) Easy Reader used by paying \$60 (b) FS Reader 3.0 costs \$1000 (c) DD Reader+ which is free. And for Android devices, this facility can be availed through the Google play store, Sugamya Pustakalaya app, Easy Reader and Voice Dream Reader.^{ix}

There are many guidelines issued by the Indian government for accessibility and reasonable accommodation for physically challenged persons. It casts a duty upon *the "Controller General of Patents, Designs and Trademarks (CGPDTM)"* for providing accessibility to the usage of websites, documents, services, systems and other processes. Physically challenged persons can write an email to the nodal officer (Disability) for accessing these facilities and they are bound to provide these services or reply in 10 days after the email and in case of grievance the complaint will be sent to CGPDTM.^x Under the National Program on Prevention and Control of Deafness (NPPCD) government of India issued guidelines for providing BTE (Behind the Ear) hearing aids at a reasonable rate for hearing impaired persons. For accessing these services they need proof of their income which would be less than 6500/- per month, for children up to the age of 14 years and clearance by ENT Surgeons.^{xi} With the "*Rashtriya Vayoshri Yojana*" scheme physically challenged persons can also get free hearing aids and wheelchairs who have BPL (Below Poverty Line) Cards.^{xii}

Hearing Devices Manufacturing Companies: Many private companies are manufacturing hearing devices for the welfare of hearing-impaired persons, but these

companies are mostly of abroad origin and their devices are costly. Approximately these devices are available in the market between 5,000/- to 3-4 lac cost. So, the accessibility of these devices is not easy because of their higher cost. Some of the renowned companies are:- (i) Widex (Origin-Denmark 1956, cost of hearing devices-10,000/- to 3 lac)^{xiii}, (ii) Oticon (Origin-Denmark 1904, cost- 9800 to 3.25 lac)^{xiv}, (iii) Phonak (Origin-Switzerland 1947, cost-25,000/- to 4 lac)^{xv}, (iv) Starkey (Origin-Washington 1961, cost- 9,000/- to 2.5 lac)^{xvi} and many others like- Unitron, Resound, Srivantos, Sonova, Bernafon, Eargo, Miracle-Ear, Signia, SONIC, Cochlear, etc. Despite these, many other companies are also manufactured hearing devices but because of higher costs, these are not easily approachable for hearing impaired persons.

The Centre for Development of Advanced Computing India (C-DAC), develop a new hearing device “*TARANG*” at a lower cost (3-4 thousand only). This organization was developed in the year of 1988 in Pune, Maharashtra for the high performance, multi lingual & heritage computing, professional electronic, software, health informatics, education, etc.^{xvii}

METHODOLOGY

In this paper, knowledge or information was acquired through the doctrinal method. The researcher used secondary methods for the collection of data. This doctrinal research involves a comparative study of developed nations with Indian laws related to “access of intellectual property rights for physically challenged persons”. Further, this study focuses on the provisions regarding the separate measures for people who are not normal and needs special attention because of their physical challenges. For this research work, information/material was attained from “*books, articles, journals, reports, notifications of government available in the library and on the internet*”.

CONCLUSION

Gaining knowledge is not an easy task for physically challenged persons. Their position has always remained difficult since ancient times. No doubt, new inventions, and advancement in technology are there but it provides a slight change in their life. The availability of books, and articles for "print disabled persons" are not as much as claimed at the National and International level. The registration of copyright or patent is not easy and also a time and money consuming task and when these are available in the market, then their prices are also on a higher side than their cost of production and registration. So, these are not easily approachable for physically challenged persons.

The new Act of 2012 in India is also new hope for "print disabled persons" but the software that is helpful for these people are not easy to approach. Their usage fee is higher and most of the persons are not aware of their usage and applications. The availability of accessible books in libraries is also far from the veracity and in actuality, these are not available. These should be freely available for these people and the government has put necessary measures for the implementation of the same. The registration fee qua to inventions/creations related to or for the use of blind people should be less so, that their cost in the market should be on a lower side and people can buy these easily. Separate provisions should be enacted regarding the registration of copyright and getting patents by physically challenged people. This will promote the artistic work done by these people.

“Article.30 of UNCRPD”, no doubt, provides equal rights and privileges for all without any discrimination but blind persons are still facing hurdles/barriers to access knowledge. As a comparative study of the National and International levels founds that mostly the books of foreign authors are easily available for low vision persons and in

India, the availability of these books, information, and material is still a major task to achieve. These obligations/provisions/measures that are set up for the benefit of persons suffering from some sought of challenges like low visions and other incapacities should be enacted strictly and their availability should be easy. More guidance or awareness programs need to be arranged or organized for these people so that they can know more about these facilities. Government can promote these things with the help of private institutions, and NGOs working in this field and by starting knowledge of this software from their schooling.

References

- Lobhpreet Kaur, Research Scholar at Lovely Professional University, Punjab, India.
- Dr. Dalliandeep Kaur Tiwana, Assistant Professor at Lovely Professional University, Punjab, India.
- Intellectual Property Rights, available at: Parikshit Bangal, Meena Paul and S.K Soni, University manual of Intellectual Property Rights 2012.
- International Perspective of IPR, available at: <https://www.wipo.int> (Last Visited on 06 March 2022).
- World Trade Organization, available at: <https://www.wto.org> (Last Visited 07 March 2022).
- Marrakesh VIP Treaty, available at: www.aripo.org/2018/Marrakesh-Treaty.pdf (Last Visited 07 March 2022).
- UNCRPD, available at: <https://www.un.org> (Last Visited 07 March 2022).
- “Section 2 (l) ‘new invention’ means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of a patent application with complete specification, i.e., the subject matter has not fallen in the public domain or that it does not form part of the state of the art”, of Patent Act 1970 (Amended 2005).
- The Copyright Act, 1970.
- Digital Accessible Information System, available at: www.nfb.org (Last Visited 08 March 2022)
- Daisy Reader of India, available at: <https://daisyindia.org> (Last Visited 08 March 2022)
- Guidelines issued by Central Government for accessible and reasonable accommodation, available at: <https://ipindia.gov.in> (Last Visited 08 March 2022)
- National Program on Prevention and Control of Deafness, available at: <https://main.mohfw.gov.in> (Last Visited 08 March 2022)
- Rashtriya Vayoshri Yojana, available at: <https://www.newindianexpress.com>(Last Visited 08 March 2022)
- Widex, available at: <https://www.widex.com>(Last Visited 08 March 2022).
- Oticon, available at: <https://www.oticon.com>(Last Visited 08 March 2022).
- Phonak, available at: <https://www.phonak.com> (Last Visited 08 March 2022).
- Starkey, available at: <https://www.starkey.com> (Last Visited 08 March 2022).
- C-DAC, available at: <https://www.cdac.in> (Last Visited 08 March 2022).

ⁱ Intellectual Property Rights, *available at*: Parikshit Bangal, Meena Paul and S.K Soni, *University manual of Intellectual Property Rights* 2012.

ⁱⁱ International Perspective of IPR, *available at*: <https://www.wipo.int> (Last Visited on 06 March 2022).

ⁱⁱⁱ World Trade Organization, *available at*: <https://www.wto.org> (Last Visited 07 March 2022).

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- ^{iv} Marrakesh VIP Treaty, *available at*: www.aripo.org/2018/Marrakesh-Treaty.pdf (Last Visited 07 March 2022).
- ^v UNCRPD, *available at*: <https://www.un.org> (Last Visited 07 March 2022).
- ^{vi} “Section 2 (1) ‘**new invention**’ means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of a patent application with complete specification, i.e., the subject matter has not fallen in the public domain or that it does not form part of the state of the art”, of Patent Act 1970 (Amended 2005).
- ^{vii} The Copyright Act, 1970.
- ^{viii} Digital Accessible Information System, *available at*: www.nfb.org (Last Visited 08 March 2022)
- ^{ix} Daisy Reader of India, *available at*: <https://daisyindia.org> (Last Visited 08 March 2022)
- ^x Guidelines issued by Central Government for accessible and reasonable accommodation, *available at*: <https://ipindia.gov.in> (Last Visited 08 March 2022)
- ^{xi} National Program on Prevention and Control of Deafness, *available at*: <https://main.mohfw.gov.in> (Last Visited 08 March 2022)
- ^{xii} Rashtriya Vayoshri Yojana, *available at*: <https://www.newindianexpress.com> (Last Visited 08 March 2022)
- ^{xiii} Widex, *available at*: <https://www.widex.com> (Last Visited 08 March 2022).
- ^{xiv} Oticon, *available at*: <https://www.oticon.com> (Last Visited 08 March 2022).
- ^{xv} Phonak, *available at*: <https://www.phonak.com> (Last Visited 08 March 2022).
- ^{xvi} Starkey, *available at*: <https://www.starkey.com> (Last Visited 08 March 2022).
- ^{xvii} C-DAC, *available at*: <https://www.cdac.in> (Last Visited 08 March 2022).