

# COPYRIGHT, ACCESSIBILITY, AND THE RIGHT TO READ: WHY INDIA MUST LOOK BEYOND EXCEPTIONS

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*In 2012, India amended the Copyright Act, 1957, to permit the conversion of copyrighted works into accessible formats by persons with disabilities and third parties on their behalf. Subsequently adopted internationally through the Marrakesh Treaty, such exceptions seek to prevent copyright from impeding education, communication, and cultural participation. Despite being a radical development in copyright and disability law, these exceptions establish a post-publication conversion regime, placing the burden of providing accessible books on volunteering third parties and the vulnerable group themselves. There is no legal mandate to publish accessible books ex ante, which are perceived as low in demand and requiring significant production expenditure. This Article argues that independent post-publication conversion, in place of accessible mainstream publishing, ultimately normalises inaccessibility. It reinforces the proprietary nature of copyright, treating rightsholders’ economic interests as sacrosanct and expansive, subject only to limited exceptions. The Article makes the case that, in order to fully realise the right to read, accessible publishing needs to be integrated at the production stage so as to increase the availability of accessible books without additional delays or financial and logistical hurdles. This is only possible if copyright’s normative vision is expanded beyond the limited exceptions paradigm to incorporate democratic values and prioritise wider participation in cultural exchange.*

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## I. INTRODUCTION

Copyright is understood as a legal construct that incentivises creative pursuits by awarding exclusive rights that allow authors to recoup investments made in such pursuits.<sup>1</sup> The result of this process is the production of knowledge goods, *i.e.*, informational or creative resources that can be replicated and commercialised. These include *inter alia* books, artworks, films, scientific formulations, and codes. Copyright, alongside other intellectual property frameworks, provides exclusive rights over these knowledge goods, allowing creators to monetise them. By encouraging a proliferation of knowledge goods, this incentive is expected to result in greater social prosperity.<sup>2</sup> However, these incentives are market-based and indirectly

<sup>1</sup> William Fisher, *Theories of Intellectual Property* in NEW ESSAYS IN THE LEGAL AND POLITICAL THEORY OF PROPERTY, 168–169 (S. R. Munzer ed., Cambridge University Press, 2001).

<sup>2</sup> See Robin Cowan & Elad Harison, *Intellectual Property Rights in a Knowledge-Based Economy* (MERIT Research Memorandum Series, Research Memorandum No. 27, 2001) available at <https://cris.maastrichtuniversity.nl/ws/portalfiles/portal/921386/guid-2b94ac20-4d37-4a84-9c0c-a1c60a72169d-ASSET1.0.pdf> (Last visited on November 8, 2025); Michael J. Madison, *Understanding Access to Things: A*

result in the production of those knowledge goods that are consumed by the masses and are therefore more profitable in the market.<sup>3</sup>

Knowledge goods sought by smaller or disadvantaged consumer groups typically have a lower demand and are potentially less profitable to rightsholders.<sup>4</sup> They are either not produced in enough quantities or are not accessible for consumption by the relevant sections of the public.<sup>5</sup> This significantly affects the dissemination of cultural works among vulnerable groups facing various barriers. Persons with disabilities, who require specialised formats and aids to read books, are one such group.<sup>6</sup> Copyright's narrow economic focus leaves cultural production to market forces, which favour the production of cultural material catered to dominant groups, such as limited-accessibility physical books designed for able-bodied persons.

Although the utilitarian approach to copyright does emphasise a balance between the interests of rightsholders and users of copyrighted works, this binary framing of interests glosses over the wide distributional disparities between various kinds of users of copyrighted material.<sup>7</sup> It is presumed that all persons who would buy and read books constitute a single homogenous group having the same needs and interests, and if books are published and available to buy for the predominantly able-bodied majority, the interests of (all) the users are satisfied, fulfilling the copyright bargain.<sup>8</sup> For the longest time, the profound inequalities that influence and impede the capacity of the various user groups partaking in cultural exchange were not taken into account.<sup>9</sup> The law was not structured to recognise these varied interests.

The availability of books and other copyrighted material in accessible formats is one such problem where publishers focus on producing books for consumption by the able-bodied public only, and the law furthers this interest. Copyright law was historically developed to promote the interests of the rapidly emerging print industry.<sup>10</sup> The right of reproduction granted to authors/copyright owners is intended to provide them with legal control over their

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*Knowledge Commons Perspective* in INTELLECTUAL PROPERTY AND ACCESS TO IM/MATERIAL GOODS, 17–43 (Jessica C. Lai & Antoinette Maget Dominicé eds., Edward Elgar, 2016); Madhavi Sunder, FROM GOODS TO A GOOD LIFE: INTELLECTUAL PROPERTY AND GLOBAL JUSTICE, Vol. 1, 84 (Yale University Press, 2012).

<sup>3</sup> Jonathan M Barnett, *Copyright Without Creators*, Vol. 9(3), REV. L. & ECON., 389, 391–92 (2014).

<sup>4</sup> Lea Shaver, *Copyright and Inequality*, Vol. 92(1), WASH. U. L. REV., 117, 127–128 (2014) ('Shaver'); Lea Shaver, ENDING BOOK HUNGER: ACCESS TO PRINT ACROSS BARRIERS OF CLASS AND CULTURE, Chapter 6 (Yale University Press, 2020); See also Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted on April 15, 1994, entered into force on January 1, 1995) 1869 U.N.T.S. 299, Ch. III.C ('TRIPS Agreement') (discussion in the context of treatments for neglected tropical diseases regarding how conventional intellectual property incentives frequently fail in underserved or economically disadvantaged markets because of the limited purchasing power of affected populations, which makes such markets financially unattractive to rights holders); Carlos M. Correa, *The Unfulfilled Promises of Innovation and Expansion of IPRs*, THIRD WORLD NETWORK, September 1, 2016, available at <https://www.twn.my/title2/health.info/2016/hi160901.htm> (Last visited on November 8, 2025).

<sup>5</sup> See Stephen Breyer, *The Uneasy Case for Copyright: A Study of Copyright in Books, Photocopies, and Computer Programs*, Vol. 84(2), HARV. L. REV. 281, 299–301 (1970).

<sup>6</sup> Shaver, *supra* note 4.

<sup>7</sup> *Id.*, 122.

<sup>8</sup> See SUNDER, *supra* note 2, 20, 21 (discussing the neglect of distributive impact of utilitarianism); Eziuddin Elmahjub & Nicolas Suzor, *Fair Use and Fairness in Copyright: A Distributive Justice Perspective on Users' Rights*, Vol. 43(1), MONASH U. L. REV. 274, 280–283 (2017) (critiquing copyright law's distributive effects).

<sup>9</sup> Shaver, *supra* note 4, 122.

<sup>10</sup> Brad Sherman & Lionel Bently, *THE MAKING OF MODERN INTELLECTUAL PROPERTY LAW: THE BRITISH EXPERIENCE, 1760–1911*, 63 (Cambridge University Press, 1999).

work to sell it for profits, license it, and prevent others from profiting from their work.<sup>11</sup> However, because this did not take the interests of persons with disabilities into account until the last decade, the right of reproduction operated to allow copyright holders to prevent the conversion of inaccessible books produced in the market into accessible versions.<sup>12</sup> As a result, accessible books are not only underproduced, but were also legally impermissible to convert into, without rightsholder authorisation.

This has led to a situation where, despite the availability of millions of books in the market, a vast majority remains inaccessible, creating a knowledge barrier akin to a famine. Not surprisingly, the World Blind Union (‘WBU’) figures state that only ten percent of all published material was available in a format accessible to persons with print disabilities in 2014.<sup>13</sup> Scholars have termed this the “book famine”.<sup>14</sup>

In 2012, India introduced a statutory copyright exception allowing for conversion into accessible formats, if undertaken in accordance with the procedure laid down in the statute.<sup>15</sup> On the international stage, this was followed by the adoption of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled in 2013 (‘Marrakesh Treaty’), which mandates countries to introduce exceptions for persons with disabilities or authorised entities to carry out such conversion.<sup>16</sup> This served as a watershed moment in intellectual property law history, as for the first time ever, a treaty had expanded copyright exceptions to facilitate access for a vulnerable group.<sup>17</sup> The Marrakesh Treaty not only removed the legal impediment against conversion into accessible formats, but it also drew global attention to the need to adapt existing copyright frameworks to widen their reach to persons with disabilities, in line with their fundamental human rights.<sup>18</sup> As a result, in the years since its ratification, several countries have gone beyond the treaty’s floor and expanded the scope of the accessibility-based exceptions.<sup>19</sup>

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<sup>11</sup> The right of reproduction is one of the core rights protected by copyright law. This right is codified in Art. 9(1) of the Berne Convention, 1886 and in §13 of the Indian Copyright Act, 1957.

<sup>12</sup> See generally Paul Harpur, DISCRIMINATION, COPYRIGHT AND EQUALITY: OPENING THE E-BOOK FOR THE PRINT-DISABLED, Vol. 1, Chapter 3, 75 (Cambridge University Press, 2017) (‘HARPUR’).

<sup>13</sup> WORLD BLIND UNION, *Marrakesh Treaty*, available at <https://worldblindunion.org/programs/marrakesh-treaty> (Last visited on July 8, 2025) (although this figure can be expected to have changed after a series of international legal amendments, updated numbers are not yet available).

<sup>14</sup> HARPUR, *supra* note 12, 75; See generally Erika Lambert, *Bread for the Blind: Ending the International Book Famine Through Negotiation of an International Instrument on Access to Copyright Works for Persons with Blindness or Visual Impairment*, Vol. 20, DALL. J. LEGAL STUD., 1 (2011); Paul Harpur & Nicolas Suzor, *Copyright Protections and Disability Rights: Turning the Page to a New International Paradigm*, Vol. 36(3), U. NEW SOUTH WALES L. J., 745 (2013) (‘Harpur & Suzor’); Agata Mrva-Montoya, INCLUSIVE PUBLISHING AND THE QUEST FOR READING EQUITY (Cambridge University Press, 2025).

<sup>15</sup> The Copyright (Amendment) Act, 2012, §52(1)(b); See also §31B (compulsory licensing for production of accessible versions for profit).

<sup>16</sup> Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, 1867 U.N.T.S. 154 (adopted on June 27, 2013, entered into force on September 30, 2016) (‘Marrakesh Treaty’).

<sup>17</sup> Delia Ferri, *The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled in the European Union: Reflecting on Its Implementation and Gauging Its Impact from a Disability Perspective*, Vol. 55, INT’L REV. INTELL. PROP. & COMPETITION L., 89, 93 (2024) (‘FERRI’).

<sup>18</sup> Access barriers created by copyright exclusion directly affect the fundamental rights to education, information, and freedom of expression.

<sup>19</sup> See INTERNATIONAL FEDERATION OF LIBRARY ASSOCIATIONS AND INSTITUTIONS, *Marrakesh Treaty Implementation: January 2025 Update*, available at <https://repository.ifla.org/rest/api/core/bitstreams/99fe18c4-74c3-47cb-9ff1-aaf02d586aac/content> (Last visited on November 8, 2025) (‘IFLA IMPLEMENTATION UPDATE’)

However, the reforms introduced by India and Marrakesh are in the form of approval for format conversion. Despite limited government funding and non-profit initiatives to undertake this exercise, post-publication format conversion is the primary source of reading material for most persons with disabilities. Being divorced from mainstream publishing leaves space for several logistical hurdles that beneficiaries must overcome to be able to access cultural works. Simply stated, the current reform merely ‘allows’ persons with disabilities to acquire copyrighted books, if they are able to convert them on their own or with third-party help. Relegating the responsibility of making knowledge accessible to the beneficiaries themselves reinforces the proprietary notion of exclusive rights, where exceptions are but limited derogations that diminish these rights, which need to be tolerated.<sup>20</sup>

This Article argues that notwithstanding all its positive effects, the conversion regime is insufficient to end the book famine. It is situated within the bounds of the limited exceptions paradigm which has fundamentally evolved to advance copyright’s economic interests while relegating human rights to “exceptions”. Policy reform must enable rightsholders to produce books accessible by persons with disabilities. The burdens on the vulnerable group need to be reduced by integrating accessibility options into mainstream publishing itself. To this end, copyright’s normative goal must be reimagined to seek wider participation in cultural processes supported by democratic values of dignity, autonomy, freedom, and fairness.

While this Article focuses on the specific exceptions in Indian copyright law, they largely reflect the wider international approach towards accessibility of copyrighted books in light of the historic development of copyright. In critiquing this approach in the Indian context, it relies on positive examples from European Union (‘EU’) law to suggest reform.

Part II of this Article conceptualises the normative “right to read” at the intersection of established fundamental rights guaranteed by the Indian constitutional framework. Part III discusses the legal and systemic aspects of the book famine. Part IV highlights the exceptions in the Copyright Act, 1957 (the ‘Act’), and the Marrakesh Treaty, which endeavour to resolve the book famine. Part V discusses the legal protections available to persons with disabilities in India, their judicial reinforcements, as well as the broader impact of the copyright exception, critiquing its *post-facto* approval approach, and evaluates how the exception fails to overcome persisting barriers for persons with disabilities. Part VI explains how the democratic approach to copyright law, informed by fundamental human rights, justifies reducing rightsholders’ control to introduce a born accessibility mandate. It then examines select accessibility policies in other jurisdictions to draw lessons for India. Part VII argues that statutory exceptions for conversion are more likely to be effective in redressing the book famine, if combined with a legal born accessibility mandate for publishers. Part VIII concludes.

## II. THE RIGHT TO READ

The right to read is not specifically enumerated in the Constitution of India, 1950 (‘Constitution’), nor in any statute. However, the broad set of fundamental rights guaranteed by the Constitution, along with their expansive and robust interpretation by the constitutional courts in India, together lend themselves to an interpretation from which the right to read can be naturally derived. Thus, in this Part, the author conceptualises the right to read as a specific application of the fundamental rights to freedom of expression, life, and education, all of which

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(many countries allow exceptions for all kinds of disabilities and all types of copyrighted works); *See generally* FERRI, *supra* note 17.

<sup>20</sup> HARPUR, *supra* note 12.

are already recognised within the Indian constitutional framework. This Part then discusses the contents of the right to read and its relevance to persons with disabilities.

### A. CONCEPTUALISING THE RIGHT

#### 1. FREEDOM OF EXPRESSION

The right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution has consistently been interpreted by the Supreme Court (the ‘Court’) to include the right to information. In *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*, the Court observed, “the right to freedom of speech and expression includes the right to receive and impart information”.<sup>21</sup> Subsequently, courts have also held that the right to receive information is necessary to make the free speech right more meaningful,<sup>22</sup> and that the right is thus a “necessary concomitant” of free speech.<sup>23</sup> This right has also been specifically held to include the right to access the internet, as that is an important means of receiving information.<sup>24</sup>

#### 2. RIGHT TO LIFE

Article 21 guarantees the right to life and personal liberty, which has been expansively interpreted to include the right to live with dignity. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,<sup>25</sup> the Court held that the right to life includes “the right to live with human dignity and all that goes along with it, such as the bare necessities of life”.<sup>26</sup> This has further been interpreted to include several aspects of dignified existence, such as access to food,<sup>27</sup> sleep,<sup>28</sup> education,<sup>29</sup> speedy trial and free legal aid,<sup>30</sup> privacy and autonomy,<sup>31</sup> reproductive autonomy,<sup>32</sup> sexual expression and identity,<sup>33</sup> amongst others.

In the context of disability, in *Anmol v. Union of India*, the Court lent its support to tailored accommodations and equitable opportunities in education stating that the principle of

“reasonable accommodation . . . implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence — whether as students, members of the workplace, participants in governance or, on a personal plane, in realising the fulfilling privacies of family

<sup>21</sup> Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal, (1995) 2 SCC 161, ¶¶198–200; See also State of Uttar Pradesh v. Raj Narain, (1975) 4 SCC 428, ¶74.

<sup>22</sup> Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294, ¶¶34–38.

<sup>23</sup> Santosh Mittal v. State of Rajasthan, (2004) SCC OnLine Raj 512, ¶12; Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467, ¶29.

<sup>24</sup> Anuradha Bhasin v. Union of India, (2020) 3 SCC 637, ¶152.

<sup>25</sup> Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608 (‘Francis Coralie Mullin’).

<sup>26</sup> *Id.*, ¶6.

<sup>27</sup> People’s Union for Civil Liberties (1) v. Union of India, (2011) 14 SCC 721.

<sup>28</sup> Re-Ramila Maidan Incident v. Home Secretary, (2012) 5 SCC 1, ¶29.

<sup>29</sup> Unni Krishnan v. State of Andhra Pradesh, AIR 1993 SC 2178, ¶¶49–50, ¶80 (‘Unni Krishnan’).

<sup>30</sup> Hussainara Khatun v. Home Secretary, State of Bihar, Patna, AIR 1979 SC 1369, 179 H, 180 C–F.

<sup>31</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, AIR 2017 SC 4161, H ¶325.

<sup>32</sup> X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi, 2022 SCC OnLine SC 1538, ¶¶96–103, 121–130.

<sup>33</sup> Navtej Singh Johar v. Union of India, AIR 2018 SC 4321, ¶248 (per Chandrachud J.).

life. The accommodation which the law mandates is ‘reasonable’ because it has to be tailored to the requirements of each condition of disability”.<sup>34</sup>

### 3. RIGHT TO EDUCATION

In *Mohini Jain v. State of Karnataka* (‘Mohini Jain’), the Court recognised that the right to education operates as a multiplier that enables an individual to enjoy other rights, as an individual cannot be assured of human dignity unless his personality is developed which is only possible through education.<sup>35</sup> It emphasised that the State is under an obligation to establish institutions to enable citizens to enjoy the right, which was further fortified through the insertion of Article 21A in the Constitution, by the 86th Constitutional Amendment. In *Unni Krishnan v. State of Andhra Pradesh* (‘Unni Krishnan’), the Court clarified that while “free and compulsory” education is a positive constitutional duty of the State only towards children between six and fourteen years of age (thus enjoying the highest level of protection), this is not intended to be read as a limitation of the education right to that age group. Outside of the specified age group, provision of education depends on the availability of resources to the State, with a view to progressively achieve the full realisation of the right.<sup>36</sup> It can therefore be said that the State is not discharged of its duty to facilitate education for other age groups.

The right to education has been linked to the broader framework of the right to life with dignity, including the need for safe and accessible learning environments, with the Court observing that the right places an affirmative burden on all participants in our civil society for its meaningful realisation.<sup>37</sup> The conceptualisation of the right as an enabler for the realisation of other rights in *Mohini Jain* has been reaffirmed in *Ashoka Kumar Thakur v. Union of India*,<sup>38</sup> with the decision in *State of Bihar v. Bihar Secondary Teachers Struggle Committee* reiterating the need for progressive realisation.<sup>39</sup> In *Farzana Batool v. Union of India*, the Court traced the recognition of the right to professional education in international human rights law and noted that the government has an affirmative obligation to facilitate access to education, at all levels.<sup>40</sup>

It is clear that the courts’ articulation of freedom of expression encourages the State to positively provide means, such as the internet, to ensure all people enjoy access to information beyond what free market mechanisms allow for.<sup>41</sup> Reading is the enabler of all the other rights. It is, thus, implicit that the freedom of speech and expression necessarily presupposes the right to read. This is further enhanced by the rights envisaged in Article 21, which essentially encompass the right to develop one’s personality and participate meaningfully in society. Without the ability to read, a legal right to a dignified life will prove hard to translate into reality. Reading and acquiring information and ideas are the means to the exercise and enjoyment of other pursuits inherent in this conception of the right to life with dignity.

Most forceful of them all is the right to education, which is an independent fundamental right and lends further support to accessible reading as a human right. While the State’s duty only extends to free and mandatory education for children, scholars have taken a

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<sup>34</sup> *Anmol v. Union of India*, 2025 SCC OnLine SC 387, ¶63.

<sup>35</sup> *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666, ¶8.

<sup>36</sup> *Unni Krishnan*, *supra* note 29, ¶49.

<sup>37</sup> *Avinash Mehrotra v. Union of India*, (2009) 6 SCC 398, ¶29.

<sup>38</sup> *Ashok Kumar Thakur v. Union of India*, (2008) 6 SCC 1 138, ¶51.

<sup>39</sup> *State of Bihar v. Bihar Secondary Teachers Struggle Committee*, Munger, (2019) 18 SCC 301, ¶52.

<sup>40</sup> *Farzana Batool v. Union of India*, 2021 SCC OnLine SC 3433, ¶9.

<sup>41</sup> *Lea Shaver, The Right to Read*, Vol. 54(1), COLUM. J. TRANSNAT’L L. 1, 24 (2015).

more expansive view of education as continuing across the lifetime.<sup>42</sup> It has been argued that fictional literature has a special role to play in the development of capacities for ethical judgment, empathy, and global citizenship.<sup>43</sup>

In the case of persons with disabilities, the right to read assumes a very particular significance whose substantive meaning encompasses not merely literacy but also the right to access knowledge and participate equally in cultural and civic life. The Rights of Persons with Disabilities Act, 2016 (the ‘RPDA’), recognises and strengthens this by mandating access to education and information through reading materials made available in accessible formats as well as reasonable accommodation in educational environments.<sup>44</sup> These statutory entitlements and their judicial reinforcement will be discussed in detail in Part V.A.

Initiatives such as the publication of the ‘Constitution of India in Braille’ and the growing availability of textbooks and official documents in Braille, in the Digital Accessible Information System (‘DAISY’), and digital talking-book formats mark key advances for persons with visual impairments.<sup>45</sup> Auditory technologies like screen readers, text-to-speech software, and audiobooks further expand access.<sup>46</sup> The Ministry of Information and Broadcasting has introduced Accessibility Standards mandating that films include audio descriptions, open or closed captions, and Indian Sign Language (‘ISL’) interpretation, with phased enforcement beginning in 2024.<sup>47</sup> Similar guidelines are being extended to television broadcasting to require captioning and ISL for select programming.<sup>48</sup> Civil society and research institutions have also contributed through projects developing ISL translation tools and producing legal and educational materials in accessible video formats.<sup>49</sup> Collectively, these measures signify a transition from a charity-based to a rights-based framework. And yet, genuine inclusivity requires attention to other disabilities through captioning and sign-language interpretation for the deaf, simplified or easy-to-read formats for persons with intellectual disabilities, and tactile or adaptive technologies for those with multiple or mobility-related disabilities.

The right to read can be said to be universal in scope inasmuch as it flows directly and necessarily out of the freedom of speech and expression. However, the source of the right and consequently its meaning differ across beneficiaries:

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<sup>42</sup> See generally Martha C. Nussbaum, *CULTIVATING HUMANITY: A CLASSICAL DEFENSE OF REFORM IN LIBERAL EDUCATION* (Harvard University Press, 1997) (‘NUSSBAUM’); Martha C. Nussbaum, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* (Beacon Press, 1995).

<sup>43</sup> *Id.*

<sup>44</sup> The Rights of Persons with Disabilities Act, 2016, §17(i).

<sup>45</sup> The Hindu Bureau, *Governor Launches Braille-Enabled Indian Constitution*, THE HINDU, August 15, 2023, available at <https://www.thehindu.com/news/national/karnataka/governor-launches-braille-enabled-indian-constitution/article69176674.ece> (Last visited on October 25, 2025).

<sup>46</sup> DAISY CONSORTIUM, *DAISY Format*, available at <https://daisy.org/activities/standards/daisy/> (Last visited on October 25, 2025); NATIONAL INSTITUTE FOR THE EMPOWERMENT OF PERSONS WITH VISUAL DISABILITIES (DIVYANGJAN), *Talking Book Unit / Digital Book Section*, available at <https://niepvd.nic.in/talking-book-unit/> (Last visited on October 25, 2025).

<sup>47</sup> Parvez Sultan, *CBFC Announces Implementation of Accessibility Standards in Cinema Theatres*, NEW INDIAN EXPRESS, September 16, 2024, available at <https://www.newindianexpress.com/nation/2024/Sep/16/cbfc-announces-implementation-of-accessibility-standards-in-cinema-theatres> (Last visited on October 25, 2025).

<sup>48</sup> Mohit Sharma, *I&B Ministry Drafts Rules for TV Programs Accessibility*, INDIA TODAY, November 9, 2021, available at <https://www.indiatoday.in/india/story/information-broadcasting-ministry-rules-for-tv-programs-1874823-2021-11-09> (Last visited on October 25, 2025).

<sup>49</sup> SOCIO-LEGAL INFORMATION CENTRE, *Disability Rights*, available at <https://www.slic.org.in/initiative/disability-rights-initiative> (Last visited on October 25, 2025).

1. All persons (Articles 19 and 21);
2. Children between six and fourteen years (additionally, Article 21A);
3. Persons with disabilities (additionally, the RPDA and international obligations).

While Article 21A entitles children to free and compulsory education provided by the state, extending to free and mandatory reading material in meaningful ways, Articles 19 and 21 nevertheless oblige the State to provide for the availability of barrier-free educational opportunities and meaningful reading material for all people. For persons with disabilities, in addition to their constitutional entitlement to reasonable accommodation, the RPDA and international obligations impose further obligations on the State to make available reading material in ways comprehensible to them and compatible with their educational interests.

### B. SCOPE OF THE RIGHT FOR PERSONS WITH DISABILITIES

Based on the above discussion, it can be said that within the Indian constitutional framework, the right to read, which originates from the other specified fundamental rights, extends beyond mere literacy, encompassing the right to access, comprehend, and engage with information and ideas in formats that are meaningful to the reader.<sup>50</sup> The specific inclusions and limitations of the right with respect to all persons, or children, is beyond the scope of this paper, as it intends to focus on the specific case of persons with disabilities in light of copyright laws. Judicial decisions examining actions brought by persons with disabilities, with respect to accessibility, shed light on the scope of this derivative right to read.

The Court in *Jeeja Ghosh v. Union of India* has held that the right to dignity creates an imperative to provide such facilities so that persons with disabilities could enjoy life meaningfully and contribute to the progress of society.<sup>51</sup> It has also recognised the doctrine of reasonable accommodation in *Vikas Kumar v. UPSC*:

“[F]or a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality — and an obligation as a society — to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination”.<sup>52</sup>

In an earlier decision, it had directed the University of Delhi to provide for special foundational courses, reading materials, and specialised teacher training for persons with disabilities in the various councils of the university.<sup>53</sup> After the enactment of the new RPDA, this was further strengthened by the Delhi High Court, which reaffirmed the duty of educational institutions to ensure that all students with disabilities are provided with specialised assistive devices that they might require to access education on an equal basis with others.<sup>54</sup>

In *P. Ramkumar v. State of Tamil Nadu* (‘P. Ramkumar’), the Madras High Court upheld the right of persons with disabilities to access literary works in accessible formats, stating that non-dissemination of the work in question in accessible formats impaired the

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<sup>50</sup> See generally *Rajive Raturi v. Union of India*, (2018) 2 SCC 413 (‘Rajive Raturi’).

<sup>51</sup> *Jeeja Ghosh v. Union of India*, AIR 2016 SC 2393, ¶2.

<sup>52</sup> *Vikas Kumar v. Union Public Service Commission*, (2021) 5 SCC 370, ¶35.

<sup>53</sup> *Sambhavana v. University of Delhi*, AIR 2013 SC 3825, ¶¶9–12.

<sup>54</sup> *Manish Lenka v. Union of India*, 2022 SCC OnLine Del 4403, ¶¶9–10 (‘Manish Lenka’).

enjoyment of cultural life and inclusive education of visually challenged persons.<sup>55</sup> This has further been extended by the Court to apply to judgments as well, and all courts are required to ensure that the judgments and orders being published by them are not inaccessible to persons with visual disabilities who use screen readers.<sup>56</sup> The same conclusion was arrived at by the Delhi High Court in *Akshat Baldwa v. Yash Raj Films*, which dealt with audio-visual entertainment in an accessible format, directing for the inclusion of essential accessibility features like audio descriptions, closed captions, and subtitles in the original language of the movie.<sup>57</sup>

Together these cases establish that the scope of the right to read with respect to persons with disabilities is broad and includes: (i) the freedom to access reading materials in diverse formats (print, digital, accessible), and (ii) the infrastructural and institutional support necessary to facilitate this access (*e.g.*, libraries, accessible books, assistive technology, audio-visual aids). The right is not limited to abled, literate, or privileged citizens but extends universally, with particular emphasis on marginalised and disabled persons, ensuring substantive equality in the realm of knowledge and education.

### III. THE BOOK FAMINE

In the previous Part, the basis and scope of the right to read, flowing out of firmly established fundamental rights, was discussed. The upcoming Parts will illustrate how the copyright regime has historically prioritised market interests over the needs of persons with disabilities, encroaching upon their right to read, and how this may be addressed. This Part examines the expansion of the economic rights accorded by copyright law to rightsholders as well as the systemic growth of the maximalist approach to copyright, which views stronger protection as the achievement of the copyright system's goals. This rapid strengthening of economic rights has presented obstacles for persons with disabilities' access to knowledge, leading to what is now called the "book famine".

Copyright law is a statutory tool that provides certain exclusive economic rights to authors, *i.e.*, the rights of reproduction, distribution, and adaptation, among others,<sup>58</sup> so as to enable them to exploit the monopoly and earn profits in the market.<sup>59</sup> These limited monopolies are awarded to enable authors to capture the market and recoup their investment through the legal exclusion of other market players.<sup>60</sup> The right to reproduction, distribution, and adaptation have all evolved and expanded gradually and form the structural and functional core of copyright law. At present, they are internationally recognised by major treaties: the Berne Convention for the Protection of Literary and Artistic Works, 1886 ('Berne Convention'),<sup>61</sup> the Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995 ('TRIPS

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<sup>55</sup> *P. Ramkumar v. State of Tamil Nadu*, 2022 SCC OnLine Mad 4947, ¶11 ('P. Ramkumar').

<sup>56</sup> *State Bank of India v. Ajay Kumar Sood*, (2023) 7 SCC 282, ¶¶21–28; *see also* *Rakesh Kumar Kalra Deaf Divyang v. State Government of NCT Delhi*, 2023 SCC OnLine Del 526, ¶¶20–31, ¶¶40–41.

<sup>57</sup> *Akshat Baldwa v. Yash Raj Films*, 2023 SCC OnLine Del 195, ¶15, ¶¶37–38.

<sup>58</sup> The Copyright Act, 1957, §14.

<sup>59</sup> Lionel Bently & Brad Sherman, *INTELLECTUAL PROPERTY LAW*, 35–40 (Oxford University Press, 5<sup>th</sup> edn., 2014).

<sup>60</sup> William Landes & Richard Posner, *THE ECONOMIC STRUCTURE OF INTELLECTUAL PROPERTY LAW*, 11–36 (Harvard University Press, 2003).

<sup>61</sup> Berne Convention for the Protection of Literary and Artistic Works, 828 U.N.T.S 221 (adopted on September 9, 1886, as revised at Stockholm on July 14, 1967) ('Berne Convention').

Agreement'),<sup>62</sup> and the WIPO Copyright Treaty, 2002 ('WCT'),<sup>63</sup> and are implemented by national statutes, such as in India.

### A. WHAT COPYRIGHT ENTAILS

#### 1. RIGHT OF REPRODUCTION

The reproduction right is the oldest right and authorises rightsholders to make copies of a work in any material form, including digital formats. Initially, this right was understood to apply to identical reproductions only. When this was found to allow people to get away with minor changes to the work, the right was expanded to include non-identical or "colourable" copying as well.<sup>64</sup> The original right recognised in the Berne Convention,<sup>65</sup> has been expanded by the WCT to include acts of reproduction possible in digital forms, such as storage, caching, and downloads.<sup>66</sup> This right has enabled the printing industry (physical copying) to function and now facilitates digital copying (downloads and uploads) too. Licensing models typically rely on reproduction as the primary right. The right is subject to various exceptions under Indian law, including the fair dealing exceptions in Section 52(1) of the Act.

#### 2. RIGHT OF DISTRIBUTION

The distribution right allows rightsholders to control the circulation of copies of the work in public through sales, rentals, or other means of transferring ownership. This right is recognised in the WCT, rather than the Berne Convention, as well as in the TRIPS Agreement.<sup>67</sup> This right further captures the first-sale doctrine, also known as the "exhaustion principle" in copyright law, which holds that a copy of a work once lawfully sold cannot be controlled by the author any further.<sup>68</sup> The import of this principle in the digital context is so far unclear in India, due to a lack of statutory guidelines or judicial precedent.<sup>69</sup> The distribution right is highly relevant for the commercialisation of works in the publishing, music, film, and software industries. It also facilitates commercial licensing and provides a legal safeguard against piracy. The distribution of works by educational institutions during the course of instruction or examination is exempted under the Act.<sup>70</sup>

#### 3. RIGHT OF ADAPTATION

The right of adaptation provides control over the creation of or use of adaptations of the original work. The boundaries between reproduction and adaptation are not always clear,

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<sup>62</sup> TRIPS Agreement, *supra* note 4.

<sup>63</sup> WIPO Copyright Treaty, 2186 U.N.T.S. 121 (adopted on December 20, 1996, entered into force on March 6, 2002) ('WCT').

<sup>64</sup> BENTLY & SHERMAN, *supra* note 59, 144.

<sup>65</sup> See *supra* note 11.

<sup>66</sup> WCT, *supra* note 63, Art. 1(4).

<sup>67</sup> TRIPS Agreement, *supra* note 4, Art. 11.

<sup>68</sup> Warner Bros. Entertainment Inc. v. Santosh V.G., 2009 SCC Online Del 835, ¶78 (explaining the international first sale doctrine).

<sup>69</sup> The Court of Justice of the European Union in *UsedSoft GmbH v. Oracle International Corp*, C-128/11, [2013] Bus. L.R. 911 July 3, 2012 (Ct. J. E.U.), has permitted resale of software licenses based on the digital exhaustion principle in EU law, whereas a U.S. Court of Appeals in *Capitol Records v. ReDigi*, 910 F.3d 649 (2<sup>nd</sup> Cir. 2018) (United States Court of Appeals for the Ninth Circuit), held the resale of legally acquired digital music files to be an infringement because each resale involved making a new digital reproduction.

<sup>70</sup> The Copyright Act, 1957, §§52(1)(h) & 52(1)(i).

and the two overlap at times.<sup>71</sup> The United States provides rightsholders with a more expansive right to create derivatives.<sup>72</sup> The Berne Convention recognises the exclusive right to authorise adaptations, arrangements, and other alterations of works.<sup>73</sup> This covers a host of uses, such as translations, adaptations from one type of work to another, like book-to-film, and some secondary uses. Adaptation is crucial to the functioning of cinema, theatre, music, publishing, comedy, art, and related industries. It is subject to several exceptions, such as fair dealing for the purpose of criticism, etc.<sup>74</sup>

Over time, these economic rights have expanded in scope from being a limited privilege available to printers of books to a licensable set of rights that empower authors and subsequent rightsholders with considerable autonomy over several aspects of the work's dissemination in public.<sup>75</sup> The rightsholder may choose to produce, or not produce, whole or parts of her work, as well as to produce in whatever quantities and modes she deems fit, subject only to a limited set of statutory exceptions. The rightsholder is thus within her right to limit reproduction of her work to inaccessible versions only, and legal protections would allow her to injunct anyone else from producing accessible versions.

#### 4. MORAL RIGHTS

In addition to economic rights, moral rights under the Act, grant authors the right to preserve the integrity of their works and to object to any distortion, mutilation, or modification deemed prejudicial to their honour or reputation.<sup>76</sup> While conceived to protect creative autonomy, this provision inadvertently operates in an ableist manner when applied to accessibility adaptations. The production of accessible formats such as Braille, DAISY, large print, simplified text, sign-language videos, or audio descriptions often necessitates modification of the original work's form or presentation. In the absence of an explicit exception within Section 57, such acts may technically constitute violations of an author's moral rights, thereby privileging aesthetic purity over functional access for persons with disabilities. While the 2012 amendment introduced Section 52(1)(b) to exempt accessible-format reproductions from economic infringement, this only applies to the economic rights in Section 14 discussed above. Moral rights remain untouched, leaving a residual tension between authorial integrity and the right to equal access. Although moral rights have so far never been used to prevent conversion of books to accessible versions, they create a structural imbalance which reinforces the able-bodied norm within copyright law, treating necessary accessibility interventions as infringing.

This regime protecting rightsholders' autonomy has historically resulted in a two-dimensional problem for persons with disabilities, which together bring about the book famine, impeding the right to read: *firstly*, the rights of reproduction and distribution have been legal prohibitions against third-parties converting books to accessible versions, locking out a vast majority of copyrighted literature (the legal dimension); *secondly*, the expansionist exclusive rights regime supported by a limited exceptions paradigm protects and privileges the

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<sup>71</sup> See *Hodgson v. Isaac*, [2010] EWPC 37, ¶21 (England and Wales Patents County Court) (Judge Birss QC referring to the 'unclear dividing line' between the two rights).

<sup>72</sup> The Copyright Act, 1976, §§101, 106(2) (U.S.A.) (definition of derivative works); see also Patrick R. Goold, *Why the U.K. Adaptation Right Is Superior to the U.S. Derivative Work Right*, Vol. 92(4), NEB. L. REV., 843 (2014).

<sup>73</sup> Berne Convention, *supra* note 61, Art. 12.

<sup>74</sup> The Copyright Act, 1957, §52(1)(a)(ii).

<sup>75</sup> BENTLY & SHERMAN, *supra* note 59, 140; See generally Ronan Deazley et al., PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT (Open Book Publishers, 2010).

<sup>76</sup> The Copyright Act, 1957, §57.

profitability of works, thus normalising inaccessibility as a natural and acceptable consequence (the systemic dimension). The argument advanced by this Article is that Indian statutory reforms of 2012, as well as the Marrakesh Treaty, removed the first barrier, but the second barrier largely persists and is perpetuated by the nature of the exception now available.

### B. THE LEGAL DIMENSION

Copyright law evolved from a printing privilege granted in European monarchies to guilds of printers and booksellers for the purpose of book trade,<sup>77</sup> to a statutory tool to enhance learning while balancing the interests of the authors with that of the public. However, these privileges operated on a narrow understanding of the term “readers”, *i.e.*, sighted and literate persons who could afford to buy books. Visually impaired persons and those with other disabilities were left out of the target audience. Although the British Statute of Anne, 1710, which is seen as the formal origin of statutory copyright, shifted the focus to protection of authorial control and incentivising commercial dissemination, the premise of the sale of physical books to sighted audiences became institutionalised.<sup>78</sup>

The expansion of types of work protected only deepened exclusion, as at first sheet music, followed by performances and sound recordings, saw rigid enforcement of reproduction and public performance rights, further narrowing the scope for accessible audio adaptations.<sup>79</sup> Copyright regimes have also structurally relied on the market for ensuring access, as opposed to prioritising inclusivity towards persons with disabilities. As a result, State intervention to expand access to persons with disabilities was not considered.

In 1886, following a rise in international consciousness about the susceptibility of creative works to appropriation in international markets owing to differing standards of protection available,<sup>80</sup> the Berne Convention was adopted.<sup>81</sup> Its membership comprised several countries including colonial powers as well as their colonised states, with its primary objective being to harmonise the protection of rightsholders’ economic interests in profiting from their works.<sup>82</sup> The context in which Berne Convention was adopted was one promoting capitalist market economies, with no obvious consideration of human rights concerns.

This was reflected in its scheme, which made copyright protection automatic with no requirement for registration, thus removing any hurdles preventing an author from exploiting her monopoly rights.<sup>83</sup> On the other hand, it placed on rightsholders no duty to make the knowledge protected by copyright accessible to people, strengthening only their side of the copyright bargain.<sup>84</sup>

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<sup>77</sup> See generally Mark Rose, *AUTHORS AND OWNERS: THE INVENTION OF COPYRIGHT* (Harvard University Press, 1993).

<sup>78</sup> BENTLY & SHERMAN, *supra* note 59, 33.

<sup>79</sup> Peter Baldwin, *THE COPYRIGHT WARS: THREE CENTURIES OF TRANS-ATLANTIC BATTLE*, 84–91 (Princeton University Press, 2014).

<sup>80</sup> Sanna Nyqvist, *Literature and International Copyright after the Berne Convention (1886)*, OXFORD RESEARCH ENCYCLOPEDIA OF LITERATURE, May 24, 2018, available at <https://doi.org/10.1093/acrefore/9780190201098.013.267> (Last visited on July 8, 2025).

<sup>81</sup> Berne Convention, *supra* note 61.

<sup>82</sup> Sam Ricketson & Jane C. Ginsburg, *INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS: THE BERNE CONVENTION AND BEYOND*, Vol. 1, 44–50 (Oxford University Press, 2<sup>nd</sup> edn., 2006).

<sup>83</sup> Sam Ricketson & Jane C. Ginsburg, *The Berne Convention: Historical and Institutional Aspects in INTERNATIONAL INTELLECTUAL PROPERTY* (J Daniel Gervais ed., Edward Elgar Publishing, 3<sup>rd</sup> edn., 2015).

<sup>84</sup> HARPUR, *supra* note 12, 69–70.

Its original text also made no provision for exceptions to the exclusive rights without the author's permission. It was only a revision in Stockholm in 1967 that added the "three-step test", incorporating a normative standard for limitations and exceptions to exclusive rights, if three factors are satisfied. These factors were:

- (i) the use is a "certain special case";
- (ii) this use does not "conflict with the normal exploitation of the work"; and
- (iii) the use does not "unreasonably prejudice the legitimate interests of the author".<sup>85</sup>

This three-step test legitimised and allowed for a number of exceptions to be included in copyright statutes across the world to facilitate interests of free expression, education, and other cultural and human rights.<sup>86</sup>

Even as copyright law was globalised in the later years of the twentieth century through the TRIPS Agreement and the WIPO Copyright Treaty, both of which also contain the three-step test,<sup>87</sup> disability access found no mention in these instruments. As Ruth Okediji and Laurence Helfer have observed, this omission was not merely an oversight, but the result of a doctrinal architecture that "internalised a normative model of authorship and readership that left disability at the margins".<sup>88</sup>

On the domestic front, the Act enlisted a number of exceptions compliant with the three-step test, including both general fair dealing exceptions and specialised exceptions. However, none of them addressed the need for accessible copies faced by persons with disabilities.<sup>89</sup>

Section 52(1)(a) of the Act contains certain fair dealing exceptions which are general in nature, *i.e.*, fair dealing for the purpose of research, teaching, private use, criticism and review. These were too narrow, and there was no judicial clarity on whether these could be used for accessible format conversion. The conversion of books into accessible formats raised several issues: whose benefit the right was for, who could initiate the conversion, what kind of conversion is permissible, to what extent, as well as any other rules or limitations. All these questions could only be addressed by a specialised exception.

However, the various specialised exceptions only included educational use,<sup>90</sup> which focused on classroom performances or examinations, and library privileges,<sup>91</sup> which enabled lending of books or reproduction of out-of-print works for preservation. These did not provide the legal authority to reformat materials for persons with disabilities, as there was no

<sup>85</sup> Berne Convention, *supra* note 61, Art. 9(2).

<sup>86</sup> Several countries have introduced exceptions aligning with the three-step test. The United Kingdom's Copyright, Designs and Patents Act, 1988, has now provided exceptions for parody, satire or pastiche under §30(1ZA) & (1ZB), for education and training (§32–36), and to permit text and data mining for non-commercial research (§29A). Canada, through its Copyright Modernization Act, 2012, expanded fair dealing exceptions to parody and satire (§29), as well as an independent user-generated content exception (§29.21). Australia's Copyright Act, 1968, was revised in 2006 to include parody and satire (§41A), educational uses and library copying (§§200AB–200AD), as well as a flexible "special case" exception (§200AB), based directly on the three-step test wording; *see generally* RICKETSON & GINSBURG, *supra* note 83.

<sup>87</sup> WCT, *supra* note 63, Arts. 6–8; TRIPS Agreement, *supra* note 4, Art. 9(1).

<sup>88</sup> Ruth L. Okediji & Laurence R. Helfer, COPYRIGHT LAW IN AN AGE OF LIMITATIONS AND EXCEPTIONS, 201–203 (Cambridge University Press, 2017).

<sup>89</sup> The Copyright Act, 1957, §52.

<sup>90</sup> *Id.*, §§52(1)(h) & 52(1)(i).

<sup>91</sup> The Copyright Act, 1957, §§52(1)(n) & 52(1)(o).

authorisation to convert works into formats like Braille, audio, large print, or digital screen-readable texts. These processes, which involve copying and altering the original work, fell squarely within the exclusive rights of reproduction and adaptation under Section 14, rendering any unlicensed accessible conversion technically infringing. The statute was also silent on emerging digital tools and assistive technologies that had become essential to accessibility by the early 2000s (the subsequent statutory amendments clarified this by allowing conversion into all accessible formats either by beneficiaries or organisations working for them, to be made available to them on a non-profit basis).<sup>92</sup> The original fair dealing exceptions in Section 52(1)(a), as well as any other specialised exceptions, which were all the statute then contained, were not equipped to serve this purpose.

This regime remained unchanged till 2012, keeping books and the vast majority of published and unpublished material with copyright subsisting on it, locked out of the reach of persons with disabilities. This was the case despite the advent of technology allowing for optical character recognition ('OCR'), screen readers, audiobooks, Braille, and other formats which enabled both the conversion of inaccessible books to accessible formats, as well as the production of books accessible by default.<sup>93</sup> Instead, publishers went out of their way to ensure that their products were not shared widely by enabling technological protection measures ('TPMs') or digital rights management ('DRM') software that restricted how many times the works may be viewed, whether it may be saved, printed or copied, and other aspects which made conversion to accessible formats difficult, if not impossible.<sup>94</sup> In the past, platforms like Amazon Kindle and Adobe Digital Editions have restricted text extraction or format conversion features, making it difficult to create Braille or audio versions of texts.<sup>95</sup>

These technological barriers are compounded by the absence of a clear legal framework governing extraction and re-use of digital content. Unlike the EU, where the Database Directive (Directive 96/9/EC) regulates extraction and re-utilisation and allows limited exceptions for lawful and public interest uses,<sup>96</sup> India lacks a comparable framework. As a result, prohibitions on text extraction or format conversion are left to private contracts and digital rights management systems, without explicit accessibility safeguards. This legal vacuum left institutions serving persons with disabilities exposed to potential copyright or contractual liability when converting protected works into accessible formats.<sup>97</sup>

The result of this physical unavailability of books and the legal impediment against making them available in accessible formats for persons with disabilities presented a massive obstacle to the realisation of their right to read. The lack of accessible materials directly impacts one's right to education,<sup>98</sup> but also prevents people from being able to receive information, express themselves in formats accessible to other persons with disabilities, and

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<sup>92</sup> *Id.*, §52(1)(zb).

<sup>93</sup> Rahul Cherman Jacob et. al., *The Disability Exception and the Triumph of New Rights Advocacy*, Vol. 5(4), NUJS L. REV., 603–604 (2012) ('Jacob et. al.').

<sup>94</sup> HARPUR, *supra* note 12, 29–30.

<sup>95</sup> *Id.*; WORLD BLIND UNION, *Digital Rights Management and Accessibility: A Barrier to Equality*, 2016, available at <https://wbu.ngo/what-we-do/digital-accessibility#:~:text=WBU%20is%20committed%20to%20ensuring,Advocate> (Last visited on September 13, 2023).

<sup>96</sup> E.C. Directive 96/9/EC, *On the Legal Protection of Databases*, March 11, 1996, O. J. L. 77/20.

<sup>97</sup> The Copyright Act, 1957, §§65A & 65B.

<sup>98</sup> Anna Leahy & Delia Ferri, *Barriers to Cultural Participation by People with Disabilities in Europe: A Study across 28 Countries*, Vol. 39(10), DISABILITY & SOC., 2465 (2023) available at <https://doi.org/10.1080/09687599.2023.2222898> (Last visited on July 22, 2025).

contribute to the cultural exchanges in the knowledge economy; all of which are fundamental to a good life.<sup>99</sup>

These legal impediments were removed through the Copyright (Amendment) Act, 2012, and were internationally addressed by way of the Marrakesh Treaty in the subsequent year. Before discussing the content of these amendments, the author will look into the systemic dimension of the book famine brought about by the limited exceptions paradigm, which legitimises the *status quo* of absolute rights and normalises inaccessibility.

### C. THE SYSTEMIC DIMENSION

This sub-part contends that inaccessibility is deeply embedded in the structure of copyright law and is upheld by the expansive and absolutist exclusive rights that shape the limited exceptions paradigm. It examines how the scope of copyright has undergone constant expansion in Anglo-American copyright law so as to further buttress the commercial interests it serves. This is evident from the expansion of the types of subject matter protected, the gradual lengthening of terms of protection, the broadening of reproduction and adaptation rights through the framing of originality and infringement tests, the judiciary's proprietary approach to copyright, and the narrow scope of international rules on exceptions. The United Kingdom ('UK') and the United States' ('US') laws have been looked at owing to the structural similarities between the UK and Indian copyright law and the former's influence on the latter, as well as the mutually influential relationship between global cultural industries and US copyright law.

Since the late nineteenth century, the rapid industrialisation and growth of global trade has led to a push for stronger intellectual property rights in general, with copyright being one of the major rights.<sup>100</sup> National policies have equated stronger protection and wider scope of rights with ease of doing business in the market, increased trade and economic development, and thus, greater material prosperity.<sup>101</sup> The utilitarian approach to copyright upholds this perception. Focusing on economic efficiency, it suggests that authors engage in creative pursuits with the expectation of financial returns; however, the easily replicable nature of knowledge goods means that they will not be encouraged to create unless incentivised through monopoly rights protecting their exclusive right to exploit the work.<sup>102</sup> This approach has formed the basis of several modern copyright regimes.<sup>103</sup>

Utilitarianism has been criticised for oversimplifying the relationship between production of knowledge goods and development, by focusing on strengthening incentives to create while neglecting the distribution side of the market.<sup>104</sup> Issues related to distribution such as pricing and affordability, language and format accessibility, technological barriers, as well as availability across social groups for secondary use have historically been relegated to the

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<sup>99</sup> SUNDER, *supra* note 2, 7 (relying on Amartya Sen and Martha Nussbaum's capabilities approach to assert that the production and just distribution of essential cultural goods regulated by intellectual property laws is critical to enabling a fulfilling human life).

<sup>100</sup> Peter Burger, *The Berne Convention: Its History and its Key Role in the Future*, Vol. 3(1), U. CALIFORNIA L.A. J. L. & TECH., 5, 5 (1998).

<sup>101</sup> STANDING COMMITTEE ON COMMERCE, Rajya Sabha, *Review of the Intellectual Property Rights Regime in India, 2011*, One Hundred and Sixty-First Report, 64–70 (July, 2021).

<sup>102</sup> Yoonmo Sang, *Revisiting Copyright Theories: Democratic Culture and the Resale of Digital Goods*, Vol. 29(7), COMM'N. THEORY, 277, 279 (2019).

<sup>103</sup> Patrick R. Goold & David A. Simon, *On Copyright Utilitarianism*, Vol. 99(3), IND. L. J., 721 (2024) (discussing utilitarian copyright's endurance in American copyright system); Caterina Sganga, *PROPERTIZING EUROPEAN COPYRIGHT: HISTORY, CHALLENGES AND OPPORTUNITIES*, Chapter 1 (Edward Elgar Publishing, 2018) (highlighting the role of utilitarian theory in Anglo-Saxon copyright regime).

<sup>104</sup> Sang, *supra* note 102, 279; SUNDER, *supra* note 2, 83; Shaver, *supra* note 4.

backstage.<sup>105</sup> And yet, the development of copyright law shows that there has been a gradual rise in the scope of exclusive rights enjoyed by rightsholders, with the corresponding human rights interests of users only finding their way into the discourse as a footnote to business interests.

As discussed above, the limited copyright privilege available to guilds of printers and booksellers over works printed by them was first codified in the Statute of Anne in 1710, where it was modified into a renewable fourteen-year monopoly right vested in authors.<sup>106</sup> This narrow right soon grappled with the proliferation of printing and mass distribution technologies, consequently expanding to drawings, engravings, paintings, photographs, sound recordings, audio-visual films, and computer programs — thus restricting the free manufacture and distribution of more knowledge goods.<sup>107</sup> The statutory terms of copyright lengthened until the Berne Convention harmonised them at life plus fifty years,<sup>108</sup> with many developed countries today providing life plus seventy years of protection.<sup>109</sup>

In the US, the Sonny Bono Extension Act, 1998, increased copyright terms to the life of author plus seventy years, and ninety-five years for certain types of works.<sup>110</sup> On the other hand, although India long resisted the push for expansive copyright terms — even seeking an exception through a protocol to the Stockholm revision of the Berne Convention for developing countries that would have limited terms to twenty-five years with a blanket exception for educational use,<sup>111</sup> — it eventually gave in to pressure. In the 1990s, India expanded its term from life plus fifty years to life plus sixty years to protect rights over the works of Nobel Laureate Rabindranath Tagore.<sup>112</sup>

Meanwhile, the scope of the reproduction right and derivative rights has undergone constant expansion globally. In the seminal case of *Walter v. Lane*, even though the transcription of a speech delivered at an event was nearly identical, the House of Lords recognised the skill and labour utilised by reporters in transcribing the speech as worthy of copyright protection, and thus excludable.<sup>113</sup> Much later, in *Designer Guild v. Russell Williams (Textiles) Ltd.*, the House of Lords ruled that infringement did not require a quantitatively substantial part, as long as the skill, labour and artistic expression, *i.e.*, a qualitatively substantial part were reproduced.<sup>114</sup> In another UK decision, comparing images of the Houses of Parliament and London scenery, the court accepted the claim of infringement based on overall

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<sup>105</sup> SUNDER, *supra* note 2, 83.

<sup>106</sup> Ronan Deazley, ON THE ORIGIN OF THE RIGHT TO COPY: CHARTING THE MOVEMENT OF COPYRIGHT LAW IN EIGHTEENTH CENTURY BRITAIN (1695–1775), 29 (Hart Publishing, 2004).

<sup>107</sup> *Id.*, 120–140.

<sup>108</sup> RONAN DEAZLEY, *supra* note 106, 90–110; Berne Convention, *supra* note 60, Art. 7.

<sup>109</sup> The Sonny Bono Extension Act, 1998 (U.S.A.), stretched copyright terms to the life of author(s) plus 70 years; The Copyright, Designs and Patents Act, 1988, §12 (U.K.), also provides for the life of author(s) plus 70 years.

<sup>110</sup> The Sonny Bono Copyright Term Extension Act, 1998, §1 (U.S.A.).

<sup>111</sup> KNOWLEDGE ECOLOGY INTERNATIONAL, *The 1967 Stockholm Revision of the Berne Convention Protocol Regarding Developing Countries*, available at <https://www.keionline.org/copyright/1967-stockholm-protocol> (Last visited on November 8, 2025).

<sup>112</sup> Bureau of the Telegraph, *Tagore Copyright Freedom at Midnight*, THE TELEGRAPH, January 25, 2002, available at <https://www.telegraphindia.com/india/tagore-copyright-freedom-at-midnight/cid/910127> (Last visited on November 8, 2025).

<sup>113</sup> *Walter v. Lane*, [1900] AC 539, 549–551 (The House of the Lords of the United Kingdom).

<sup>114</sup> *Designer Guild Ltd. v. Russell Williams (Textiles) Ltd.*, [2000] UKHL 58, ¶¶26–28 (The House of Lords of the United Kingdom).

composition and feel of the images despite differences in detail.<sup>115</sup> All of these decisions lowered the threshold for protection and infringement, thus expanding the scope of copyright.

The skill and labour test of originality that developed in English courts,<sup>116</sup> was adopted in pre-constitutional courts in India as the “sweat of the brow” doctrine which granted copyright protection to works that reflected a certain amount of effort, judgment, and diligence, regardless of originality in the creative sense. The Madras High Court notably followed this approach in *Macmillan Company Ltd v. K and J Cooper*.<sup>117</sup> This is not surprising as the Copyright Act, 1914, which was then in force in the country, was structurally based on the UK’s Copyright Act, 1911. The test was reaffirmed post-independence in *Govindan v. Gopalakrishna*,<sup>118</sup> where the Madras High Court found that a guidebook was copyrightable due to the “considerable skill and labour” expended by the author.<sup>119</sup>

This remained the test for originality applied by Indian courts until the Court’s decision in *Eastern Book Company v. D B Modak* (‘Eastern Book Company’),<sup>120</sup> which rejected it in favour of a new test inspired by the “skill and judgment” standard in Canada,<sup>121</sup> while also taking note of the minimal degree of creativity standard followed in the US courts,<sup>122</sup> both of which require higher degrees of creativity than the much lower threshold of the sweat of the brow doctrine. The Court held that while labour and skill are necessary, they alone do not suffice to render a work original under Section 13 of the Act. Although this apparently reduces the scope of copyright by tightening the standard for originality, it still accepts trivial formatting contributions like paragraph division or numbering for meeting the threshold of originality in certain circumstances, creating, at most, a standard only marginally stronger than the sweat of the brow.<sup>123</sup> The result of which is that a vast number of works continue to remain eligible for copyright protection.

Indian courts have also reinforced copyright’s proprietary character by interpreting it within a property paradigm, undermining the limited character of its monopoly and the need to balance it with human rights interests. Deciding on a matter concerning a territorial license held by Penguin Books, the Delhi High Court has interpreted that the law treats infringement of copyright as “infringement of a right” in property.<sup>124</sup> Copyrights considered as unique forms of property and monopoly, are essentially pecuniary rights. In its most elementary form copyright means “the exclusive right to multiply copies of a book”.<sup>125</sup> Similarly, in *Eastern Book Company*, the Court likened the use of the plaintiff’s labour for producing his work, to taking away the result of another man’s labour, *i.e.*, his property.<sup>126</sup>

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<sup>115</sup> *Temple Island Collections Ltd. v. New English Teas Ltd.*, [2012] EWPC 1, ¶¶43–46 (Patents County Court England and Wales).

<sup>116</sup> *University of London Press Ltd. v. University Tutorial Press Ltd.*, [1916] 2 Ch 601, 608–610 (The Chancery Division of the Supreme Court of Judicature in England).

<sup>117</sup> *Macmillan Company Ltd v. K and J Cooper*, AIR 1924 Mad 471, ¶¶33–41.

<sup>118</sup> *Govindan v. Gopalakrishna*, AIR 1955 Mad 391, 393–394.

<sup>119</sup> *See generally* R G Anand v. Delux Films, AIR 1978 SC 1613; *Super Cassettes Industries Ltd. v. Entertainment Network (India) Ltd.*, (2008) 13 SCC 30.

<sup>120</sup> *Eastern Book Company v. D B Modak*, AIR 2008 SC 809, ¶¶29–37 (‘Eastern Book Company’).

<sup>121</sup> *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 SCR 339, 2004 SCC 13, ¶¶16–25 (Supreme Court of Canada).

<sup>122</sup> *Feist Publications Inc v. Rural Telephone Service Co*, 499 US 340, 345–348 (1991) (Supreme Court of the United States).

<sup>123</sup> *Eastern Book Company*, *supra* note 120, ¶41.

<sup>124</sup> *Penguin Books Ltd. v. India Book Distributors*, AIR 1985 DEL 29.

<sup>125</sup> *Id.*, ¶25.

<sup>126</sup> *Eastern Book Company*, *supra* note 120, ¶¶29, 37, 40.

The TRIPS Agreement in 1994 embraced Berne Convention's minimum standards,<sup>127</sup> keeping up the practice of a strong minimum standards regime that allowed countries to go further and strengthen monopolies, without any ceiling on rights or focus on keeping monopolies limited enough to accommodate human rights interests. As a result, several developed countries have used free trade agreements with developing partner countries to insist that the latter observe TRIPS plus levels of protection, effectively increasing the scope of copyright through political manoeuvre.<sup>128</sup> Although the TRIPS Agreement does recognise the need to follow domestic development priorities in its Articles 7 and 8,<sup>129</sup> that is neither enforceable nor detailed enough to give rise to specific rights for users.

Like Berne Convention, the TRIPS Agreement also limits exceptions to the three-step test.<sup>130</sup> Scholars agree that the three-step test in its first part, embodies narrowness as a condition for exceptions.<sup>131</sup> The World Trade Organization's Panels have been clear that any exception to rights needs to be a small diminution and narrow in nature.<sup>132</sup> The requirement against conflicting with the normal exploitation of the work further entrenches the superiority of the economic rights. This reflects the collective understanding that users' rights are secondary to the interests of the rightsholder.

The test is, therefore, not designed in a manner that would accommodate the conversion of all books and materials available to able-bodied individuals into versions accessible by persons with disabilities. At best, it can envisage limited exceptions to convert books without noticeably harming the profit interests of rightsholders. This only permits exceptions, allowing for conversion of legally obtained copies to accessible formats, based on conditions like non-profit basis, requirement for remuneration, and most importantly, limiting permission to post-publication conversion only. Exceptions that operate entirely within the framework of the three-step test are simply not sufficient to deliver equal protection of the right to read to persons with disabilities.<sup>133</sup>

This gradual expansion of scope, term, and standards of protection reveals how the economic interests protected by copyright have taken centre stage and are systemically promoted, with the accessibility concerns of vulnerable groups receding to the background. This obscures the role of copyrighted works as essential educational material, crucial for the realisation of human rights, and results in the widespread normalisation of inaccessibility, reflecting the deeper, systemic nature of the dominance of economic rights over users' interests. In the following Part, the Article discusses how the amendments pertaining to persons with disabilities in 2012, resolved the legal dimension of the problem, but have not made a meaningful difference in the systemic dimension.

#### IV. COPYRIGHT'S RECONCILIATION WITH DISABILITY RIGHTS

##### A. INDIA'S 2012 AMENDMENTS

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<sup>127</sup> TRIPS Agreement, *supra* note 4, Art. 9(1).

<sup>128</sup> Peter K. Yu, *The International Enclosure Movement*, Vol. 82(4), *IND. L. J.* 1211, 866–870 (2007) available at <https://www.repository.law.indiana.edu/ilj/vol82/iss4/1> (Last visited on July 8, 2025).

<sup>129</sup> TRIPS Agreement, *supra* note 4, Arts. 7, 8.

<sup>130</sup> TRIPS Agreement, *supra* note 4, Art. 13.

<sup>131</sup> Andrew F. Christie & Robin Wright, *A Comparative Analysis of the Three-Step Tests in International Treaties*, Vol. 45(4), *INT'L REV. INTELL. PROP. & COMPETITION L.*, 409, 411 (2014).

<sup>132</sup> Panel Report, Canada – Patent Protection of Pharmaceutical Products – Complaint by the European Communities and their member States (March 17, 2000), *WTO Doc. WT/DS114/R*, ¶7.45.

<sup>133</sup> This will be further addressed in Part V.

The Constitution of India imposes a duty upon the State to secure the fundamental right to equality and the freedom of expression to all its people,<sup>134</sup> and guarantees the right to free and compulsory education for children.<sup>135</sup> As discussed earlier, the Court has long interpreted the right to life to encompass the many guarantees that make for a meaningful life, not limited to a life with dignity and the right to read.<sup>136</sup> Although the RPDA was enacted in 2017, India has been a signatory to the United Nations Convention on the Rights of Persons with Disabilities (the ‘UNCRPD’) since 2006, and has therefore been under the obligation to ensure that “protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier” to access to cultural material by persons with disabilities.<sup>137</sup>

Against this backdrop, the amendments of 2012 were a result of sustained campaigning and advocacy that had commenced a decade prior to the final enactment. As noted by Rahul Cherian Jacob, Sam Taraporevala, and Shamnad Basheer (‘Jacob *et. al.*’);<sup>138</sup> Professor Vinod Sena, in his presentation to a Special Committee of the Indian Government, had urged for an exception in the copyright laws, exempting conversion to accessible formats, kickstarting the process. While in agreement on principle, the initial versions of exceptions proposed by the Government were conservatively drafted, fettered by concerns of misuse. They limited the scope of the exception to special formats like Braille and sign language.<sup>139</sup> This excluded many persons with disabilities who relied on formats that were not “special”, such as digitised versions, hands-free navigation, text-to-speech, large font texts, simplified language, etc., which could typically be used by abled persons too. This excluded people with motor disabilities, dyslexia, other learning disabilities, low vision, and cognitive and intellectual disabilities, amongst others. A second version introduced compulsory licenses through the Copyright Board, with payment of royalties for non-special formats.<sup>140</sup> However, this too was inadequate owing to several issues with the Copyright Board’s functioning,<sup>141</sup> and because it risked discriminatory treatment between persons with print disabilities and those with other disabilities, making the process for access more complex for some.

Followed by an intervention from the Parliamentary Standing Committee,<sup>142</sup> the Parliament modified the exceptions to be more inclusive. The final amendment, passed in 2012, removed any limitations on types of disabilities or formats. It carved exceptions into the rights of reproduction, adaptation, issuing of copies and communication to the public for ‘any’ accessible format, to be carried out by either individuals or by organisations working for the benefit of persons with disabilities, where the normal format prevents the enjoyment of the works by such persons.<sup>143</sup> The conditions applicable are that the copies must be available on a non-profit basis except to recover production costs, and the organisation must take reasonable

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<sup>134</sup> The Constitution of India, 1950, Arts. 14, 19.

<sup>135</sup> *Id.*, Art. 21A.

<sup>136</sup> Francis Coralie Mullin, *supra* note 25.

<sup>137</sup> Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S 3 (adopted on December 13, 2006, entered into force on May 3, 2008) Art. 30(3) (‘UNCRPD’).

<sup>138</sup> Jacob *et. al.*, *supra* note 93, 607.

<sup>139</sup> *Id.*, 607, 608.

<sup>140</sup> *Id.*, 609.

<sup>141</sup> Ananth Padmanabhan, *Copyright Board and Constitutional Infirmities: Failure of the Copyright (Amendment) Act, 2012 and Suggestions for Reforms*, Vol. 5(4), NUJS L. REV., 703 (2012).

<sup>142</sup> STANDING COMMITTEE ON HUMAN RESOURCE DEVELOPMENT, Rajya Sabha, *Report on the Copyright (Amendment) Bill, 2010, Two Hundred Twenty-Seventh*, ¶¶13.1–13.3 (November, 2010) available at [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2010/SCR\\_Copyright\\_Bill\\_2010.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2010/SCR_Copyright_Bill_2010.pdf) (Last visited on November 8, 2025).

<sup>143</sup> The Copyright Act, 1957, §52(1)(zb).

steps to ensure it is used by persons with disabilities only.<sup>144</sup> Additionally, an organisation may also carry out such a conversion for profit by applying for a compulsory license for the same.<sup>145</sup>

This new exception was historic inasmuch as it brought copyright law into harmony with the constitutional protection accorded to persons with disabilities and their right to read. It was broad, far-reaching, and inclusive. However, the provisions nevertheless introduced certain ambiguities surrounding the practical implementation of the exception. Section 52(1)(zb) hinges on the works being made available on a non-profit basis, and yet, the statute has not defined the term “non-profit” or how it may be ascertained.<sup>146</sup> This could be done by verifying registration under the Societies Registration Act, 1860, or Section 8 of the Companies Act, 2013, or Section 12G of the Income Tax Act, 1961. The wording of the statute also does not clarify whether it extends to for-profit entities engaging in format-conversion on a non-profit basis for the benefit of persons with disabilities. If such activities are indeed within the scope, the means of verification for their non-profit status remain equally unclear.

Another open question is what the mandate of “reasonable steps” for restricting use to persons with disabilities entails. The law does not clarify what this term means in operational terms. This may include verification of disability status of beneficiaries through certificates of disability issued under the RPDA. However, the process of obtaining such certificates can be a complex and time-consuming process,<sup>147</sup> creating hurdles for readers to obtain accessible books. The absence of clear procedural guidelines as to what steps may be considered reasonable leaves organisations open to the risk of infringement liability, creating a chilling effect on the production of accessible content.

### *B. MARRAKESH TREATY: THE WORLD CATCHES UP*

Not long after India’s statutory amendments, the Marrakesh Treaty was adopted by WIPO members. The Treaty mandated its signatories to introduce exceptions or limitations allowing for conversion of lawfully obtained copyrighted works into accessible formats by authorised entities on a non-profit basis.<sup>148</sup> These new obligations were mandatory and enforceable against the signatories, rather than being advisory or declaratory like the Doha

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<sup>144</sup> The Copyright Act, 1957, Proviso to §52(1)(zb).

<sup>145</sup> The Copyright Act, 1957, §31B.

<sup>146</sup> Pranesh Prakash, *Analysis of Copyright Amendment Bill, 2012*, CIS-INDIA: ACCESS TO KNOWLEDGE BLOG, May 23, 2012, available at <https://cis-india.org/a2k/blogs/analysis-copyright-amendment-bill-2012> (Last visited on September 4, 2025) (discussing how different phrases are used to refer to libraries in the amendment. In §2(1)(fa), it talks about “non-profit library”; in §52(1)(n) and (o), it refers to “non-commercial public library” and in §52(1)(zb), it talks of “library or archives”, but §52(1)(zb) also requires that the works be made available on a “non-profit basis”. The differentiation, if any, that is sought to be drawn between these is unclear).

<sup>147</sup> The Hindu Bureau, *Centre Finalises Stricter Norms for Disability Certificates; Activists Seek Their Withdrawal*, THE HINDU, October 23, 2024, available at <https://www.thehindu.com/news/national/centre-finalises-stricter-norms-for-disability-certificates-activists-seek-their-withdrawal/article68787209.ece> (Last visited on November 8, 2025); Apoorva K. Bachhav et al., *Challenges in Disability Certification in Psychiatry in India*, Vol. 67(7), INDIAN J. PSYCHIATRY, 707–709 (2025) available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC12330998/> (Last visited on September 4, 2025).

<sup>148</sup> Marrakesh Treaty, *supra* note 16.

Declaration.<sup>149</sup> Countries were allowed the discretion to require remuneration for the exercise.<sup>150</sup>

This marked a departure from the existing international copyright law regime as codified in the Berne Convention and the TRIPS Agreement. So far, the international instruments had only focused on enhancing the scope of protection for copyright, with relatively less attention to exceptions. The Berne Convention and the TRIPS Agreement laid down the various rights to be made available to authors and the term and scope of such rights. As seen in the previous Part, the broader objective of both treaties was the harmonisation of laws across countries so as to support international trade and commerce.<sup>151</sup> There was little attention to developing exceptions, and the three-step test was included as an indicative framework to guide states on framing the limited exceptions.<sup>152</sup>

The Marrakesh Treaty instead brought the interests of users of intellectual property-protected works to the forefront. It used the three-step test as its basis to craft a specialised exception that would limit the scope of copyright to allow for existing works to be used to make accessible versions. This effectively developed the architecture of international copyright law in areas where the existing framework has long been lacking. Spearheaded by the WBU, legitimised on the basis of the UNCRPD, and championed by India with its far-reaching precedent, the Treaty became a remarkable achievement in international copyright law. It is heralded as the first copyright agreement to limit rather than expand the scope of exclusive rights, and ‘mandate’ rather than ‘suggest’ exceptions,<sup>153</sup> thus paving the way for an intellectual property regime informed with human rights values.

Some standards imposed by the Marrakesh Treaty are more restrictive than those in Indian legislation; such as, the exception envisaged does not extend to the right of adaptation, and there is no provision for accessible format conversion to take place on a for-profit basis, limiting its commercial scope. It is also targeted at the print-disabled only, not extending to people with other kinds of disabilities.<sup>154</sup> On the other hand, it promotes collaborative measures to tackle the book famine by permitting cross-border distribution of accessible books to other such entities or to beneficiaries themselves.<sup>155</sup> This must be carried out by authorised entities only, *i.e.*, entities authorised or recognised by the government to provide education, instructional training, adaptive reading, or information access to beneficiary persons on a non-profit basis.<sup>156</sup> In practical terms, this would include Non-Governmental Organisations, libraries, and similar organisations authorised by the government.

Jacob *et. al.* point out that in addition to providing an illustrative precedent, India further contributed diplomatically to the Marrakesh Treaty. Owing to the broader nature of its own exceptions, India negotiated in favour of adopting the new directives as minimum

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<sup>149</sup> The Doha Declaration on the TRIPS Agreement and Public Health (2001), another international agreement on users’ interest, did not introduce new exceptions to intellectual property rights under the TRIPS Agreement. Instead, it affirmed and clarified the existing flexibilities already present in the agreement, particularly those related to public health. See Ministerial Declaration, November 14, 2001, WT/MIN(01)/DEC/1, available at [https://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm) (Last visited on September 4, 2025).

<sup>150</sup> Marrakesh Treaty, *supra* note 16, Art. 4(5).

<sup>151</sup> See *supra*, Part III on “The Book Famine”, specifically III.A on “Right of Reproduction”.

<sup>152</sup> *Id.*

<sup>153</sup> HARPUR, *supra* note 12, 70.

<sup>154</sup> Marrakesh Treaty, *supra* note 16, Art. 3.

<sup>155</sup> Marrakesh Treaty, *supra* note 16, Art. 5.

<sup>156</sup> Marrakesh Treaty, *supra* note 16, Art. 2(c) (discussing how it also includes a government institution or non-profit organisation or that provides the same services to beneficiary persons as one of its primary activities or institutional obligations).

standards only, allowing countries to go beyond and accord greater protection to persons with disabilities. This has become one of the most beneficial features of treaty, as today, several countries including those in the EU, the UK, Australia, and South Africa,<sup>157</sup> have adopted copyright exceptions broader than the Marrakesh requirements. The UK expands upon the visual and print-disabilities mandate and make their exceptions available to cognitive, physical, and perceptual disabilities, while Australia is open to all disabilities without restriction.<sup>158</sup> While the EU's Marrakesh regulation aligns with the treaty, it has implemented a born accessible mandate in books and other consumer goods that enhances the effectiveness of the overall accessibility policy.<sup>159</sup> Although South Africa is yet to ratify the Marrakesh Treaty owing to complications with its amendment process, the courts have read-in a broader Marrakesh style exceptions that extend to all persons with disabilities.<sup>160</sup>

India also had a role to play in revising the originally proposed term 'trusted intermediary' to the finalised 'authorised entity' in the context of cross-border distributions. This was a far-reaching change, as 'trusted intermediary' had a much narrower definition that required bodies to have legal personality and assist persons with print-disabilities as their primary mission.<sup>161</sup> This would exclude mainstream libraries and educational institutions which engaged in such activity but not as their primary mission. The switch to authorised entities ensured that a greater number of organisations in developed countries were legally permitted to export accessible literature to developing countries.<sup>162</sup> Thus, it allowed for reduction of labour duplication in places where it was already difficult owing to limited technological capabilities and facilitated wider access to the benefits of innovation.

The Marrakesh Treaty embraced the new international approach in disability rights jurisprudence, embodied in the UNCRPD,<sup>163</sup> moving forward from mental and social models of disability and closer to the human rights model. This approach viewed persons with disability not as objects of charity, social assistance or medical attention, but as human beings with rights, entitled to dignity and capable of being active members of society. It took them closer to accessibility of published works as well as to the realisation of their right to participate in cultural life.<sup>164</sup> The following comparative overview examines how major jurisdictions have incorporated the Treaty's mandates into domestic law, highlighting the distinct legal and policy approaches adopted in pursuit of accessibility and inclusion.

## 1. THE EU

The EU implemented the Marrakesh Treaty through Directive (EU) 2017/1564 and a directly applicable Regulation (EU) 2017/1563, harmonising exceptions for the benefit

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<sup>157</sup> See IFLA IMPLEMENTATION UPDATE, *supra* note 19.

<sup>158</sup> See The Copyright, Designs and Patents Act, 1988, §§31A–31F (U.K.) ('CDPA'); The Copyright Act, 1968, §§113E–113F (Aus.).

<sup>159</sup> See *infra* note 250.

<sup>160</sup> *Blind SA v. President of the Republic of South Africa and Others*, [2025] ZACC 9, ¶¶210–223 (Constitutional Court of South Africa) ('reading in' a new clause 19D to the Copyright Act, pending the enactment of legislation to remedy constitutional defects identified in the Copyright Act).

<sup>161</sup> STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS, WIPO, *Draft Consensus Instrument, Proposal by the Delegation of United States of America*, 3, June 21–24, 2010, available at [https://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_20/sccr\\_20\\_10.pdf](https://www.wipo.int/edocs/mdocs/copyright/en/sccr_20/sccr_20_10.pdf) (Last visited on August 29, 2025).

<sup>162</sup> Jacob et. al., *supra* note 93, 624.

<sup>163</sup> UNCRPD, *supra* note 137, Art. 30; Harpur & Suzor, *supra* note 14.

<sup>164</sup> See generally Ilias Bantekas et. al., *Article 30: Participation in Cultural Life, Recreation, Leisure, and Sport in THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: A COMMENTARY* 863 (Ilias Bantekas et. al. eds., Oxford University Press, 2018).

of persons who are blind, visually impaired, or otherwise print-disabled.<sup>165</sup> The Directive requires Member States to permit reproduction, distribution, and communication of works in accessible formats without right-holder authorisation, while the Regulation governs cross-border exchanges of such copies within and outside the EU. Together, they establish a uniform ‘authorised entity’ model, ensure mutual recognition among Member States, and remove earlier fragmentation in accessibility exceptions.

## 2. THE UK

The UK enacted the Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations, 2018, which amended the Copyright, Designs and Patents Act, 1988, to implement the Marrakesh Treaty.<sup>166</sup> The amendments introduced new exceptions permitting production and cross-border exchange of accessible format copies by authorised entities and individuals for personal use. Post-Brexit, the UK retained these provisions domestically, ensuring continued alignment with Marrakesh obligations.

## 3. THE US

The US implemented the Treaty through the Marrakesh Treaty Implementation Act, 2018, which amended Section 121 of the Copyright Act (the Chafee Amendment), 1996.<sup>167</sup> The reform expanded the scope of ‘authorised entities,’ expressly allowed cross-border sharing of accessible copies, and aligned anti-circumvention provisions under Section 1201 to permit circumvention of DRM where necessary to create accessible versions. The Act preserved the non-commercial nature of the exception and maintained compatibility with existing US accessibility frameworks.

## 4. CANADA

Canada ratified the Marrakesh Treaty in 2016 and amended the Copyright Act, 1985, to align with its obligations.<sup>168</sup> The amendments broadened the existing exception allowing the reproduction and distribution of works in accessible formats, clarified that circumvention of technological measures is permissible for accessibility purposes, and permitted cross-border exchange of accessible copies. Canada’s model is largely consistent with its ‘user-rights’ orientation in copyright, emphasising access and non-commercial use.

Across jurisdictions, implementation of the Marrakesh Treaty reflects differing balances between accessibility and copyright protection. The European Union pursued the most harmonised and structured model through coordinated directives and regulations, while the United States and Canada opted for incremental amendments to existing exceptions. India

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<sup>165</sup> See E.U. Directive 2017/1564, *On certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society*, September 13, 2017, O.J. E. U. L 242, Preamble, 6; E.U. Regulation 2017/1563, *On the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled*, 2017 O.J. E.U. L 242, 1.

<sup>166</sup> See The Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations, 2018, (U.K.); CDPA, *supra* note 158.

<sup>167</sup> The Marrakesh Treaty Implementation Act, 2018, §§121(a)–(c) (U.S.A.).

<sup>168</sup> See The Copyright Act, 1985, §§32–32.01 (Can.); GOVERNMENT OF CANADA, *The Marrakesh Treaty*, March 9, 2016, available at <https://www.canada.ca/en/innovation-science-economic-development/news/2016/03/the-marrakesh-treaty.html> (Last visited on November 8, 2025).

stands out as an early adopter, embedding broad accessibility rights in its 2012 amendment even before ratification, and pairing them with compulsory licensing safeguards. Collectively, these models illustrate how the Treaty's open-ended framework enables countries to tailor implementation to local legal traditions, technological readiness, and the broader goal of reducing the book famine for persons with disabilities.

It is no doubt that the Marrakesh Treaty was a watershed moment in the history of intellectual property law. Its reforms have made tens of thousands of works accessible to persons with disabilities and removed the legal obstacles in the path of accessibility. Despite this major legal breakthrough, the systemic dimension of the problem that led to the book famine has not been substantially addressed by the new regime.

## V. STATE OF ACCESSIBILITY LAW IN INDIA

The Indian statutory amendments of 2012 and the Marrakesh Treaty, both follow the same approach to disability inclusion in copyright law: they 'allow' the making of accessible books as a voluntary, post-publication exercise undertaken either by the beneficiaries or by third parties. This exercise is one that requires significant logistical, financial, and organisational wherewithal. However, persons living with disabilities in India already face several barriers and burdens despite the existence of legal safeguards intended to support them.

### A. LEGAL FRAMEWORK

India is home to 4.95 million blind persons and seventy million visually impaired persons.<sup>169</sup> While the latest census details for the total number of persons with disabilities are not available, sample survey data reveals that approximately 1,06,894 out of the 5,76,569 persons, *i.e.*, close to a fifth of the individuals surveyed, suffered some kind of disability.<sup>170</sup> Consequently, the domestic legal framework establishes a set of rights and protections for persons with disabilities. The Indian Constitution provides for the right to equality, which has been interpreted to apply against disability discrimination,<sup>171</sup> as well as the right to education,<sup>172</sup> and a life with dignity.<sup>173</sup> The Court has explicitly adopted a substantive understanding of equality and recognised the doctrine of indirect discrimination,<sup>174</sup> which is said to occur when a facially neutral policy has a disproportionately detrimental impact on a certain protected group of persons.<sup>175</sup>

After India acceded to the UNCRPD, the Persons with Disabilities Act, 1995, was replaced with the RPDA whose approach to disability inclusion is grounded in human rights, inclusion, and accommodation, aligning it further with international obligations. The RPDA establishes rights, institutions, and mechanisms to safeguard and promote the interests of persons with disabilities. It has wide-ranging protections for inclusive education, equal opportunity employment, accessible environments, social security, healthcare and financial

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<sup>169</sup> See S. Mannava et. al., *Current Estimates of the Economic Burden of Blindness and Visual Impairment in India: A Cost of Illness Study*, Vol. 70(6), INDIAN J. OPHTHALMOLOGY, 2141 (2022).

<sup>170</sup> Jeetendra Yadav et al., *Measuring the financial impact of disabilities in India (an analysis of national sample survey data)*, Vol. 18(10), PLOS ONE (2023), available at <https://doi.org/10.1371/journal.pone.0292592> (Last visited on July 9, 2025).

<sup>171</sup> Vikash Kumar v. Union Public Service Commission, (2021) 5 SCC 370, ¶52 (per Chandrachud J.).

<sup>172</sup> Disabled Rights Group v. Union of India, (2017) INSC 1078, ¶10.

<sup>173</sup> Jeeja Ghosh v. Union of India, (2016) 7 SCC 761, ¶¶29–33.

<sup>174</sup> Lt. Colonel Nitisha v. Union of India, 2021, SCC OnLine SC 261, ¶¶44–45 ('Nitisha'); Navtej Singh Johar v. Union of India, AIR 2018 SC 4321, ¶395 (per Chandrachud J.).

<sup>175</sup> *Id.*, ¶65.

inclusion. However, owing to a poor oversight mechanism, the implementation of these provisions remains a major challenge across states, making it difficult to avail the protections already available in the legislation.<sup>176</sup>

Most of its provisions promoting accessibility are not strictly enforceable but aspirational — they require the “government to promote accessibility” or to take measures to that effect.<sup>177</sup> Such language is not strong enough to establish a legal mandate that would further the concrete vision of accessibility and inclusion that the legislation endorses.<sup>178</sup> Indian courts have had to step in to fill this enforceability gap by mandating implementation measures invoking guarantees arising out of the fundamental rights to life, equality, and dignity.<sup>179</sup> The provisions for accessible roads and infrastructure have been interpreted as non-negotiable compulsory standards with penalties for non-compliance.<sup>180</sup> Similarly, film accessibility through audio descriptions and subtitles has been judicially enforced through directions for creation of mandatory accessibility standards for entertainment industry.<sup>181</sup> However, it is not a positive sign that enforcement has been given effect through judicial intervention rather than proactive statutory mechanisms, as this indicates that the target group, many of whom lack significant financial and legal resources, have had to go through litigation to actualise the protections already promised by the statute.

The RPDA promises free or subsidised care for eligible individuals, particularly in rural areas, with priority treatment and barrier-free access in healthcare facilities.<sup>182</sup> It also directs the government to set up insurance schemes for their employees with disabilities.<sup>183</sup> And yet, in the households of persons with disability, over twenty percent of the monthly consumption expenditure is spent on out-of-pocket expenses for disability and more than half of the households have incurred catastrophic health expenditure on account of a member being disabled.<sup>184</sup> This shows that the strong statutory guarantees do not translate into practical support as health expenses relating to disability impose significant cost burdens on individuals with disabilities and their households.

The RPDA also guarantees employment reservations for those with benchmark disabilities and mandates schemes for social security, poverty alleviation, and income

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<sup>176</sup> MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT, *Status Report in Respect of Independent Commissioner as on 16 July 2024*, Annex I, 3–5 <https://cdnbbsr.s3waas.gov.in/s3e58aea67b01fa747687f038dfde066f6/uploads/2024/09/20240930626632355.pdf> (Last visited on December 15, 2025).

<sup>177</sup> Sanjay Jain & Rajalaxmi Joshi, *Inclusive Public Space Project: Legal Report*, IPS PROJECT, available at <https://inclusivepublicspace.leeds.ac.uk/legal-report/india> (Last visited on November 8, 2025) (discussing how in absence of any provision to visit its non-compliance, and with the usage of terminology like ‘suitable measures,’ provisions may sound aspirational or declaratory); Aditya Mehrotra, *India’s Disability Rights Law Still Has a Long Way to Go*, JURIST, January 19, 2023, available at <https://www.jurist.org/commentary/2023/01/aditya-mehrotra-india-disability-rights> (Last visited on September 2, 2025).

<sup>178</sup> Bhavya Johari, *India’s Rights of Persons with Disabilities Act, 2016: An Unfulfilled Promise*, OXFORD HUMAN RIGHTS HUB, June 24, 2024, available at <https://ohrh.law.ox.ac.uk/indias-rights-of-persons-with-disabilities-act-2016-an-unfulfilled-promise/> (Last visited on November 8, 2025); Richa Bansal, *From Parks to Paperwork – Disability Rights in India Need a Cultural Push*, THE WIRE, December 3, 2022, available at <https://thewire.in/rights/from-parks-to-paperwork-disability-rights-in-india-need-a-cultural-push> (Last visited on September 2, 2025).

<sup>179</sup> Rajive Raturi, *supra* note 50.

<sup>180</sup> *Id.*

<sup>181</sup> Akshat Baldwa, *supra* note 57.

<sup>182</sup> The Rights of Persons with Disabilities Act, 2016, §25.

<sup>183</sup> *Id.*, §26.

<sup>184</sup> *Id.*

support.<sup>185</sup> However, reports suggest that about nineteen percent of the households who were previously above the poverty line were pushed beneath it after disability treatment expenditure.<sup>186</sup> Although the Act acknowledges the economic vulnerability of persons with disabilities, the continued role of disability as a major poverty trigger, contrary to the intent of the Act, shows failures in implementing social protection and income-replacement mechanisms.

## 1. ACCESSIBILITY AND EDUCATION

Persons with disabilities require multi-faceted technological assistance to access reading material and pursue an education. This includes assistive technology for converting books to audio, braille, OCR, or other formats which poses a major challenge for several individuals and households. This technology is neither inexpensive nor easily available. A typical overhead scanner with auto page detection, curve flattening, bundled OCR, and export to searchable PDF functionality alone costs around INR 60,000.<sup>187</sup> While the Marrakesh-compliant software supported by the DAISY Forum of India is free and open access, other software necessary to run these scanners costs around INR 30,000 per year.<sup>188</sup> Further, most of this technology is difficult to use without sighted or able-bodied assistants.

Outsourcing accessible format conversions to charities and libraries is a beneficial option to reduce costs and logistical hurdles. As education is one of the focus areas of the RPDA, there are detailed provisions to promote the accessibility of public facilities. These include schooling infrastructure,<sup>189</sup> use of appropriate languages, modes and means of communication,<sup>190</sup> the provision of books, other learning materials, and appropriate assistive devices free of cost to children with benchmark disabilities.<sup>191</sup> Availability of contents in audio, print, and electronic media in accessible format, as well as audio description, sign language interpretation, and close captioning are also to be promoted.<sup>192</sup> It even seeks to promote consumer goods of universal design,<sup>193</sup> and empowers the Central Government to formulate accessibility standards.<sup>194</sup>

However, like the provisions on healthcare and financial security, those on securing educational capacities expose equally glaring gaps in practice. A large number of libraries in India lack the kind of infrastructural support that persons with disabilities need. In a study comprising forty-five Indian academic institutions, it was found that only 35.6 percent of the libraries had funding earmarked for disability support including technology like Job

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<sup>185</sup> *Id.*, §§24, 34–38.

<sup>186</sup> *Id.*

<sup>187</sup> FUJITSU SCANSNAP SV600 CONTACTLESS SCANNER (OVERHEAD A3 BOOK SCANNER), available in India for ₹60,100 via Amazon (sold by Nisarga Information Technology Solutions Pvt Ltd) available at <https://www.amazon.in/Fujitsu-PA03641-B301-ScanSnap-SV600-Scanner/dp/B01AJI0426> (Last visited on July 8, 2025).

<sup>188</sup> ABBYY FINEREADER 15 STANDARD, EDUCATION EDITION, sold for ₹31,203 at Ubuy India, available at <https://www.ubuy.co.in/product/1DEONNSS-abbyy-finereader-15-standard-edu-esd-886389177577> (Last visited on July 9, 2025).

<sup>189</sup> The Rights of Persons with Disabilities Act, 2016, §§16(ii), 46.

<sup>190</sup> *Id.*, §16(v).

<sup>191</sup> *Id.*, §17(g).

<sup>192</sup> *Id.*, §42.

<sup>193</sup> *Id.*, §43.

<sup>194</sup> *Id.*, §40.

Access with Speech ('JAWS') and text enlargement software.<sup>195</sup> Many library buildings were also physically inaccessible, lacking ramps, elevators, accessible restrooms, and proper signage; clearly failing the mandate of inclusive and accessible educational infrastructure.<sup>196</sup> Another study carried out among fourteen leading Indian law universities revealed that only two of them had advanced assistive technologies, only six had JAWS software, and four of them lacked any kind of assistive technology at all.<sup>197</sup> Approximately sixty-nine percent libraries lacked any kind of staff training to assist users with disabilities.<sup>198</sup> This reflects a massive non-implementation of the statutory mandate to take steps for the training of staff in institutions to cater to persons with disabilities and conducting sensitivity and orientation programs.<sup>199</sup>

The central government has made efforts in the form of Sugamya Pustakalaya initiative, which is an online accessible library launched in 2016 under the Accessible India Campaign (Sugamya Bharat Abhiyan) that seeks to provide accessible library infrastructure equipped with assistive technology. However, it is not established under the RPDA or but as an aspirational executive initiative the participation in which is neither mandatory nor enforceable. As of now there are only sixteen such libraries in the whole country.<sup>200</sup> This state of libraries and leading institutions shows that the support available to convert books to accessible formats has far from penetrated across the country to resolve the book famine. Access to content remains severely restricted, and the RPDA's affirmative obligations have not translated into meaningful access.

Leaving accessibility largely to voluntary efforts has other negative impacts. India is a country with twenty-two official languages and more than fifteen thousand languages and dialects. The National Book Trust has published translations in fifty-five different languages.<sup>201</sup> However, the Sugamya Pustakalaya, or the national library of accessible books, only has twenty-eight thousand books across twenty languages.<sup>202</sup> Languages with fewer speakers and smaller publishing industries are less likely to have books converted into accessible formats, resulting in exclusion of their monolingual speakers.

This systemic failure of implementation and enforcement of RPDA's mandate leaves persons with disabilities highly dependent on the charity and support of benevolent third parties, including for post-publication conversion of books through the use of assistive technology. Thus, it only allows for this glacial pace and incomplete transition towards accessibility. Accessibility cannot be dependent on the encouragement of goodwill-oriented voluntary initiatives. In order to overcome these failures and set up a better functioning system, statutory guidelines will have to be supported with a much stronger enforcement framework grounded in time-bound legal obligations, clear standards, and accountability mechanisms.

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<sup>195</sup> Mohammed Nazim & Altaf Ali, *An investigation of access to library facilities and services for persons with disabilities in India*, Vol. 51(4), IFLA J., available at <https://doi.org/10.1177/03400352241310532> (Last visited on July 9, 2025).

<sup>196</sup> *Id.*, 8.

<sup>197</sup> Akash Singh, *Accessibility of Library Services for Persons with Disabilities: A Study of Services provided by Select Law University Libraries in India*, Vol. 34(3–4), INDIAN J. INFO., LIBR. & SOC'Y., 189, 197 (2021).

<sup>198</sup> *Id.*, 9.

<sup>199</sup> The Rights of Persons with Disabilities Act, 2016, §§24(1)(c) & 38.

<sup>200</sup> Ministry of Social Justice and Empowerment, Press Release No. 2114797 (Issued on March 25, 2025).

<sup>201</sup> NATIONAL BOOK TRUST, *Citizens' Charter*, available at [https://www.nbtindia.gov.in/aboutus\\_\\_8\\_\\_citizens-charter.nbt](https://www.nbtindia.gov.in/aboutus__8__citizens-charter.nbt) (Last visited on July 9, 2025).

<sup>202</sup> SUGAMYA PUSTAKALAYA, *Welcome to Sugamya Pustakalaya*, available at <https://sugamyapustakalaya.org.in/welcomeLink.action> (Last visited on July 9, 2025) ('SUGAMYA PUSTAKALAYA').

## 2. COURTS ON RIGHTS OF PERSONS WITH DISABILITIES

Part II.B highlighted some cases where Indian courts have opined upon issues surrounding the right to read, in the context of the fundamental rights and the accessibility laws in India. In particular, the courts have recognised the rights of persons with disabilities to have necessary reading material in accessible formats and to be provided with special assistive technology.<sup>203</sup> This is not limited to education alone and extends to other literary works as well as court judgments and orders. These decisions reveal a positive trend of strong rights-based enforcement and judicial support for reasonable accommodation.

Further, most of the guarantees in the statute place the responsibility of making available accessible material on intermediaries like educational institutions or governments, as opposed to the publishing industry itself, which would significantly reduce the need for a separate, onerous process of procurement or conversion. In the case of P. Ramkumar, the petitioner was an individual who had a visual disability of one hundred percent and wished to read *Thirukkural*, a seminal work in Tamil literature and moral philosophy, which was included in the academic curriculum.<sup>204</sup> This text had not been made available to him in the requisite Braille format. The case concluded in the government submitting to the Court that it shall provide the text in Braille format free of cost. While this decision laid down the important precedent for the provision of material in academic curricula in the necessary format for free, it also exposed how obtaining an accessible publication can prove to be a long-drawn process requiring state intervention and associated delays. The government's duty to ensure the availability of accessible versions can prove to be difficult in the absence of ready availability of born accessible books.

This problem was further illustrated in the case of *Avichal Bhatnagar v. CEO, Pralek Prakashan Pvt. Ltd.* ('Avichal').<sup>205</sup> The petitioner, a scholar with visual disabilities, sought an accessible copy of a book titled "Abode of Agony", which was not published in an accessible format. The Chief Commissioner for Persons with Disabilities ('CCPD') took note of the issue, emphasising the need for accessible books for academics and ordinary readers. However, this could not compel the Court to issue any directions for the book to be converted to an accessible format or published as accessible, owing to commercial interests, as the Court itself stated. Instead, the task of conversion was left to the petitioner himself.<sup>206</sup> The commercial interest referred to here is the one protected by copyright over the book.

This case sheds light on the wide chasm between the experience of abled persons acquiring books and that of a person with disability. In spite of the legal protections that are in place under the RPDA, the Court could not direct the publisher to make an accessible book available. It can therefore be viewed as an instance of indirect discrimination under Article 14 of the Constitution of India, where a facially neutral copyright regime, which does not prevent anyone from accessing copyrighted works, produces a disproportionately adverse impact on people with disabilities. The case shows how the law shifts the burden of accessibility onto the petitioner. As the Court has held,<sup>207</sup> indirect discrimination occurs when a seemingly neutral rule disproportionately burdens a disadvantaged group without adequate justification.

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<sup>203</sup> See Manish Lenka, *supra* note 54; P. Ramkumar, *supra* note 55.

<sup>204</sup> P. Ramkumar, *supra* note 55.

<sup>205</sup> *Avichal Bhatnagar v. CEO, Pralek Prakashan Pvt. Ltd.*, 15015/1101/2024, ¶3 ('Avichal').

<sup>206</sup> *Id.*, ¶3.

<sup>207</sup> Nitisha, *supra* note 174.

In addition to the delays and the initial unavailability, Avichal also exposes the reduced availability of accessible versions of books that are not part of a formal educational curriculum. This would extend to books read for pleasure or enhancing one's knowledge outside of a formal education system, such as fiction and non-fiction works, which greatly contribute to the development of one's personality.<sup>208</sup> Although courts have stood by the right to have accessible audio-visual content from the entertainment industry, the order in Avichal indicates that the RPDA's promise of providing accessible educational material does not appear to extend to such written works.

These two cases expose how, despite the existence of a complete framework for the protection of rights of persons with disabilities and a fairly broad copyright exception, the dependence on retrofitted conversion to make books accessible creates a huge gap in the experience of persons with disabilities in obtaining literary works.

### B. REVISITING THE DISABILITY EXCEPTION

These barriers to attaining accessible versions of books impose an onerous burden that can lead to unavailability as well as significant delays, which present serious hindrances in the pursuit of education. Books and other materials protected by copyright are the primary means of collecting, receiving, and imparting knowledge and information. They facilitate the pursuit of education, research, communication, and cultural exchanges. To that end, they support the entire cultural ecosystem and form one of the practical means through which several fundamental human rights, such as education, work and pursuit of meaningful occupations, receiving and sharing information, and human dignity are fulfilled.<sup>209</sup>

Publishing companies possess the financial and infrastructural resources to be able to publish accessible books at the stage of production. It is well known that publishing corporations benefit exponentially from the sale of titles and often share only a small amount of the profit with authors.<sup>210</sup> It would, therefore, be far more viable for publishers to integrate accessible publishing into their business models. Unlike the Marrakesh provisions, the Act does not prevent profit-making entities from publishing accessible books, which can be done through the compulsory license scheme.<sup>211</sup>

However, the law does not require publication of accessible books at the production stage, *i.e.*, 'born-accessibility', as that may amount to interference with the copyright holder's exclusive control guaranteed through the rights to reproduction, distribution, and adaptation.<sup>212</sup> Indeed, born-accessibility mandates copyright holders to create accessible formats when they otherwise would not, or would do so but only to release them separately to monetise as a different market segment. This would impose a legal duty to invest in accessible design, such as screen-readable or DAISY formats<sup>213</sup> overriding commercial intent, effectively converting what was once a voluntary or strategic choice into a statutory obligation.

Although several problems that plague the conversion regime can be substantially reduced if accessibility features were introduced in books from the beginning, this

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<sup>208</sup> For an expansive view of education for world citizenship, see NUSSBAUM, *supra* note 42, Chapter 2; for development of empathy and moral capacities via literature, see NUSSBAUM, *supra* note 42, Chapter 3.

<sup>209</sup> HARPUR, *supra* note 12, 91.

<sup>210</sup> HARPUR, *supra* note 12, 26–30.

<sup>211</sup> The Copyright Act, 1957, §31B.

<sup>212</sup> *Id.*, §§14(a)(i), (ii), (vi), (c)(i), (iii), (v), (d)(i), (ii), (iii), (e)(i), (ii), (iii).

<sup>213</sup> DAISY format refers to the set of technical standards set by the international DAISY Consortium for creating and reading accessible digital talking books.

is not considered a viable option because the market serves the greater demand of the masses, which is perceived as more profitable, and copyright is systemically predisposed to protect this profit interest in published works.<sup>214</sup> It can therefore be surmised that the conversion regime legitimised by a disability exception functions strictly within the architecture of copyright's limited exceptions paradigm.

This exception-based conversion regime also has the deeper detrimental impact of positioning disability as a deviation in collective social imagination rather than a fundamental part of human diversity. If children with disabilities must always wait longer to receive their educational materials, scholars must seek out non-profits to convert or import their research resources, and the ordinary person with disability must make special appeals for cultural material to be procured in accessible versions for them, the social perceptions of disability will be shaped accordingly. This fundamentally reneges on the constitutional promise of equal protection and reinforces the 'unequal place' of persons with disabilities. It is also at conflict with the social-contextual model of disability that the UNCRPD advocates for.<sup>215</sup> As Harpur states, "Focusing on accessibility as a limited exception perpetuates the subordination of persons with print disabilities".<sup>216</sup>

This article does not argue that the exceptions introduced are unhelpful. As can be gathered from the actions of several jurisdictions amending their laws to not only incorporate but go beyond Marrakesh's exceptions to accommodate the needs of persons with disabilities in copyright law, the Marrakesh Treaty has removed legal barriers to accessible conversion and drawn attention to the pressing need for intellectual property law to align itself to fundamental human rights. Within India, the copyright amendments have led to a rise in consciousness among education providers and other institutions regarding the need for inclusivity and accessibility, manifesting in the form of the development of access-friendly infrastructure.<sup>217</sup> Instead, what this article contends is that the current state of affairs is a mere starting point that operates within prevailing notions of copyright absolutism. In order to fully realise the right to read, and on equal terms as that for able-bodied individuals, further positive state action is required in the form of policy intervention into what is conceived as a sacrosanct exclusive right: publishing models.

## VI. REIMAGINING COPYRIGHT AND ACCESSIBILITY

As discussed above, the disability exception's inability to fully realise the right to read is directly connected to copyright law's rigid and restrictive paradigm of limited exceptions. To reconcile copyright with accessible publishing, a fundamental recalibration of copyright's normative vision is necessary. This part discusses the necessary theoretical shifts in copyright law and outlines the form that external policy interventions must take.

### A. DEMOCRATIC APPROACHES

Copyright law's longstanding focus on protecting the profitability of works presumes that greater production of works leads to social welfare.<sup>218</sup> This understanding needs to give way to a stronger focus on the distribution side of the copyright bargain, prioritising

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<sup>214</sup> Breyer, *supra* note 5, 299–301.

<sup>215</sup> Caterina Sganga, *Disability in EU Copyright Law* in RESEARCH HANDBOOK ON EU DISABILITY LAW, 201, 204 (Edward Elgar Publishing, 2020).

<sup>216</sup> HARPUR, *supra* note 12, 75.

<sup>217</sup> SUGAMYA PUSTAKALAYA, *supra* note 202.

<sup>218</sup> SUNDER, *supra* note 2, 84.

goals like wider participation, access and inclusivity, and diversity in cultural production.<sup>219</sup> The benefits of the copyright system must reach wider sections of society, both in terms of access to cultural works as well as the opportunity to participate in cultural exchange on equal terms and derive gains from it.<sup>220</sup>

This normative vision of copyright posits wider cultural participation for the purpose of human flourishing,<sup>221</sup> i.e., the realisation of fuller and meaningful human lives, as the end goal of the copyright system, embodying democratic values and requiring copyright and cultural policy to further human rights like freedom of expression, information and equality. A democratic approach to copyright would also extend to broader democratic engagement, such as participatory policymaking, stakeholder consultations and public input in copyright reform, and user rights advocacy.

Indian courts are not strangers to this approach. A landmark example of the existing copyright regime being viewed through a human rights lens is *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*,<sup>222</sup> where the Delhi High Court underscored the democratic imperative of access to educational material for students and favoured a broad interpretation of the educational use exception in Section 52.<sup>223</sup> On the other hand, the statute reflects only a partial commitment to equity and inclusion. Despite incorporating fair use options like broad disability exceptions, it continues to be shaped predominantly by author-centric and international trade-driven imperatives.<sup>224</sup>

With respect to persons with disabilities, cultural participation and human flourishing would mean being able to read and enjoy cultural works through books, films, informational and other knowledge goods, not just for the purpose of education and information but also for recreational purposes like entertainment and pursuit of interests.<sup>225</sup> It would also involve them being able to contribute to such pursuits through the use of their own ideas and efforts. This can be achieved by an approach that combines reforms in accessibility policy with the restructuring of copyright law, wherever necessary, to support this goal. To that extent, the disability exception, although an important step, remains situated within the existing landscape of copyright law.

A democratic approach to copyright necessitates that the rigid contours of existing copyright laws be reshaped, and the systemic predisposition to expanding copyright gives way to more radical law and policy interventions by the lawmakers, furthering human rights. As the architecture of limited exceptions is not equipped to allow the full realisation of the right to read, it is argued that policy intervention mandating mainstream publication of born accessible books is a fundamental necessity, even if it interferes with exclusive economic rights.

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<sup>219</sup> SUNDER, *supra* note 2, 62.

<sup>220</sup> *Id.*, 8–11; SHAVER, *supra* note 4, 122; Anupam Chander & Madhavi Sunder, *Copyright's Cultural Turn*, SSRN (2013) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2268779](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2268779) (Last visited on November 16, 2025); Margaret Chon, *Intellectual Property and the Development Divide*, Vol. 27(6), CARDOZO L. REV., 2813 (2006).

<sup>221</sup> Sang, *supra* note 102, 281.

<sup>222</sup> *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*, 2016 SCC OnLine Del 4934, ¶¶30–34, 39.

<sup>223</sup> The Copyright Act, 1957, §52(1)(i).

<sup>224</sup> See generally Shravani Nag Lanka & Medha Garg, *Striking Silence: How YouTube's Broken Copyright System Threatens Free Speech*, INTERNET FREEDOM FOUNDATION, September 14, 2021, available at <https://internetfreedom.in/striking-silence-how-youtubes-broken-copyright-system-threatens-free-speech/> (Last visited on November 9, 2025).

<sup>225</sup> Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S. 3 (adopted on December 30, 2006, entered into force on May 3, 2008) Art. 30.

This would appear to diminish the autonomy in business decisions and may be considered a welfarist intervention in the free market of the publishing industry, but would serve to immensely further the interests of persons with disabilities.

## B. BORN ACCESSIBLE MOVEMENT

### 1. THE MOVEMENT

Books must be produced, *i.e.*, ‘born’ accessible *ex ante*. The knowledge economy would benefit vastly if books were produced in formats accessible to persons across the spectrum of abilities, as this would greatly reduce the need for post-publication conversion and the many logistical and financial obstacles that come with it. If accessible books are produced and sold in the market in the same manner as inaccessible books currently are, this would also avoid the delays faced by persons with disabilities in receiving accessible copies. Such a policy would empower persons with disabilities to access knowledge on equal terms, instead of merely allowing them to avail exceptions that legalise accessing of knowledge.

With this goal in mind, the Born Accessible Movement<sup>226</sup> was started by several non-profits, expanding to include publishers, in an international effort to ensure that books and other digital content are produced as accessible from the beginning, as opposed to being subsequently converted into formats suitable for persons with disabilities.<sup>227</sup> For a book to be born accessible, it is expected to be of universal design. The UNCRPD defines universal design as “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design” but without excluding assistive devices for particular groups of persons with disabilities where needed. This implies that it must be compatible with assistive technologies like screen readers and text-to-speech software and built using formats such as ePUB 3, DAISY format, etc.<sup>228</sup>

The goals of the Born Accessible Movement seek to overcome the limitations of the Marrakesh Treaty. Despite its significant advancement, it remains fundamentally reactive and limited in scope. It permits post-publication conversion rather than requiring the creation of born accessible formats, and restricts beneficiaries to those who are visually impaired or have physical disabilities that impede reading,<sup>229</sup> and is to be implemented within the “three-step test” paradigm, subject to optional commercial availability checks.<sup>230</sup> In contrast, the Born Accessible Movement advocates for universal design, calling for content to be accessible “from its inception”, thus eliminating or significantly reducing the need for downstream

<sup>226</sup> BORN ACCESSIBLE, *Born Accessible*, available at <https://bornaccessible.benetech.org> (Last visited on November 8, 2025); DIAGRAM CENTRE, *Born Accessible Publishing*, available at <https://diagramcenter.org/born-accessible-publishing.html> (Last visited on July 9, 2025).

<sup>227</sup> See, *Born Accessible Content*, DAISY CONSORTIUM, (DAISY, 2021) available at <https://daisy.org/info-help/born-accessible/> (Last visited on July 9, 2025); Bill Kasdorf, *Why Accessibility is Hard and How to Make it Easier: Lessons from Publishers*, Vol. 30(1), LEARNED PUBL’G, 195-196 (2018) available at <https://onlinelibrary.wiley.com/doi/10.1002/leap.1146> (Last visited on November 8, 2025) (‘Kasdorf’); Agata Mrva-Montoya, *Towards “born-accessible” educational publishing: Results from an Australian Publishers Association survey*, Vol. 38, PUBL’G. RESCH. Q. 735, 736-738 (2022), available at <https://doi.org/10.1007/s12109-022-09922-0> (Last visited on July 9, 2025) (‘Mrva-Montoya’).

<sup>228</sup> See Kasdorf, *Id.*, 195–196; Mrva-Montoya, *Id.*, 737–739.

<sup>229</sup> FERRI, *supra* note 17, 95.

<sup>230</sup> Fredrick Otiye & Ahmed Hadj Barát, *IFLA’s Role in the Implementation of the Marrakesh Treaty*, Vol. 49(2) IFLA J. 452 (2023), available at <https://doi.org/10.1177/03400352221141465> (Last visited on November 8, 2025).

remediation.<sup>231</sup> This approach emphasises inclusive design across all disabilities, not just print-related ones, promoting a proactive rather than compensatory model.

Led by organisations like the international DAISY Consortium and Bookshare in the 2000s and supported by WIPO's Accessible Books Consortium, the Born Accessible Movement is a public-private partnership whose membership today includes organisations like the WBU as well as libraries, organisations representing authors, publishers, and collective management organisations.<sup>232</sup> The Consortium's 'ABC Charter' encourages publishers around the world to adopt born-accessible standards.<sup>233</sup> As a voluntary initiative, this Charter has no legal basis and therefore lacks binding authority. A handful of large publishers like Hachette, Macmillan, and HarperCollins are some who have adopted born-accessibility standards, but without the force of law, it will continue to lack wider impact.<sup>234</sup>

## 2. CROSS-JURISDICTIONAL ANALYSIS OF ACCESSIBILITY MANDATES

As of today, very few countries have 'born' accessibility enforced as a legal mandate.<sup>235</sup> While some jurisdictions require educational institutions or public offices to make information and materials available in accessible formats to the extent they concern books, that alone cannot be said to meet the goals of the born accessibility movement. Born accessibility, as understood from above, requires the production of books that are accessible from their inception, placing the responsibility on publishers. This subsection surveys the accessibility policies in the UK, the US, Canada, and the EU to examine whether they can be said to have in place a born accessibility model.

### a. The US

In the US, the Americans with Disabilities Act, 1990 ('ADA') prohibits discrimination against individuals with disabilities in all areas of public life, including employment, transportation, and public accommodations.<sup>236</sup> Additionally, Section 508 of the Rehabilitation Act, 1973 promotes digital accessibility by requiring federal agencies to make their electronic content and information technology-related content (including websites and

<sup>231</sup> Except for works out of print, as those could only become accessible if converted to accessible formats.

<sup>232</sup> WORLD INTELLECTUAL PROPERTY ORGANISATION, *Accessible Books Consortium*, available at <https://www.wipo.int/en/web/abc> (Last visited on November 8, 2025); Catherine Jewell, *The Accessible Books Consortium: What It Means for Publishers*, WIPO MAGAZINE, February 21, 2018, available at <https://www.wipo.int/en/web/wipo-magazine/articles/the-accessible-books-consortium-what-it-means-for-publishers-40239> (Last visited on November 8, 2025).

<sup>233</sup> *Charter for Accessible Publishing*, WORLD INTELLECTUAL PROPERTY ORGANISATION, available at <https://www.accessiblebooksconsortium.org/en/portal/charter> (Last visited on July 10, 2025).

<sup>234</sup> HACHETTE BOOK GROUP, *Accessibility Statement*, available at <https://www.hachettebookgroup.com/landing-page/accessibility-statement/> (Last visited on July 10, 2025); *Accessibility Statement*, HARPERCOLLINS PUBLISHERS, November 15, 2024, available at <https://sdg.internationalpublishers.org/sdgaction/championing-accessibility-at-harpercollins> (Last visited on July 10, 2025); MACMILLAN LEARNING, *Macmillan Learning Earns Industry's First Global Certified Accessible Designation from Benetech*, available at <https://www.macmillanlearning.com/ed/uk/our-story/news-and-media/first-global-certified-accessible-designation-from-benetech> (Last visited on November 8, 2025); TAYLOR & FRANCIS GROUP, *Taylor & Francis Becomes a Global Certified Accessible Publisher*, July 20, 2022, available at <https://newsroom.taylorandfrancisgroup.com/taylor-francis-becomes-a-global-certified-accessible-publisher> (Last visited on July 10, 2025).

<sup>235</sup> Joanne Fitzpatrick, *Global Accessibility Barriers*, COPIM, April 24, 2025, available at <https://doi.org/10.21428/785a6451.4813a15e> (Last visited on September 5, 2025).

<sup>236</sup> The Americans with Disabilities Act, 1990, §§12101–12213 (U.S.A.).

digital material) accessible to people with disabilities.<sup>237</sup> Neither of these legislations imposes an explicit legal requirement for content to be born accessible, and Section 508 does not extend to private publishers. Consequently, compliance tends to take the shape of retrofitting or responding to complaints by making content accessible on demand.<sup>238</sup> With respect to education, the Individuals with Disabilities Education Act sets up a foundational legal framework to ensure that children with disabilities receive a free, appropriate public education. The Act requires the development of Individualised Education Programs (‘IEPs’), which may include accessible instructional materials (‘AIM’) and assistive technologies tailored to each student’s needs.<sup>239</sup> Although the IDEA encourages the provision of accessible content, it also does so on a responsive basis by requiring schools to supply accessible formats, when necessary, rather than mandating that all educational materials be born accessible.

#### b. The UK

The UK enforces non-discrimination requirements through the Equality Act, 2010, which places a legal obligation on both public and private sector organisations to make reasonable adjustments to ensure that individuals with disabilities are not disadvantaged.<sup>240</sup> While the Equality Act does not provide a precise statutory definition of ‘reasonable adjustments,’ guidance clarifies that the duty depends on factors such as practicality, cost, and effectiveness.<sup>241</sup> Conceptually, this duty is analogous to reasonable accommodation under the UNCRPD, as both aim to remove barriers to equality, though the UK framework imposes a statutory obligation on organisations rather than recognising an individualised right alone.<sup>242</sup> The Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations, 2018 requires all public sector websites and mobile apps to meet accessibility standards, specifically WCAG 2.1, by specific deadlines, and the former must also publish accessibility statements and compliance reviews.<sup>243</sup> This framework too, does not mandate accessibility at the creation stage.

#### c. Canada

Canada’s federal Accessible Canada Act (‘ACA’), enacted in 2019, mandates that barriers to accessibility in federally regulated sectors be identified, removed, and prevented. However, it does not explicitly require ‘born’ accessibility in publishing or digital content creation. Instead, it targets compliance within operations, often implemented after content creation.<sup>244</sup> Although not as a legislative mandate, the government supports and funds publishers through the Canada Book Fund to encourage them to integrate accessible publishing

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<sup>237</sup> The Rehabilitation Act, 1973, §794(d) (U.S.A.).

<sup>238</sup> Brian Wentz et. al., *Retrofitting Accessibility: The Legal Inequality of After-the-Fact Online Access for Persons with Disabilities in the United States*, Vol. 16(11) FIRST MONDAY (November, 2011), available at <https://firstmonday.org/ojs/index.php/fm/article/view/3666/3077> (Last visited on September 1, 2025).

<sup>239</sup> The Individuals with Disabilities Education Act, 2004, §1400 (U.S.A.).

<sup>240</sup> The Equality Act, 2010, §15 (U.K.).

<sup>241</sup> The Equality Act, 2010, §15, §§ 20–21 (U.K.); The Equality Act 2010 Code of Practice on Employment, 2011, §§6.9–6.12 (U.K.).

<sup>242</sup> The Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S. (adopted on December 30, 2006, entered into force on May 3, 2008) Art. 2.

<sup>243</sup> The Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations, 2018 (U.K.).

<sup>244</sup> The Accessible Canada Act, 2019 (Canada).

features into the production and distribution of digital books so as to make them usable by everyone.<sup>245</sup>

These voluntary compliance mechanisms, supplemented by government funding and tax incentives, illustrate a promising approach to encouraging accessible publishing. This is particularly true for jurisdictions with strong institutional support. However, voluntary measures alone are unlikely to achieve universal accessibility. In a country as vast and diverse as India, participation could turn out to be more fragmented and market incentives may still not be enough in case of niche works or regional-language texts. The Sugamya Pustakalaya initiative, a government-funded digital repository of accessible books, has only achieved limited success.<sup>246</sup> While financial incentives may catalyse adoption among major publishers, without complementary mandates or robust enforcement mechanisms, such voluntary approaches are unlikely to ensure comprehensive access for all readers with disabilities.

Across jurisdictions, a model based on born accessibility, where accessibility is integrated at the point of creation rather than retrofitted later, remains aspirational rather than legally mandated. The US, the UK, and Canada each have strong anti-discrimination and accessibility frameworks, which primarily operate reactively, requiring accessible formats to be provided upon request or within public-sector contexts. None imposes a direct obligation on private publishers to produce accessible works from inception. When educational institutions and public offices are made responsible for providing accessible content instead, the only option at their disposal is conversion through disability exceptions. The comparative landscape thus reveals that most jurisdictions frame accessibility as a matter of accommodation.

## VII. BORN ACCESSIBILITY AS A LEGAL MANDATE: LESSONS FROM THE EU MODEL

The most advanced example of a legally born accessibility mandate comes from the EU, which passed the European Accessibility Act in 2019 ('EAA').<sup>247</sup> The EU addresses accessibility through a set of cohesive reforms, each intending to achieve a complementary purpose. These include, firstly, the Marrakesh Directive, requiring EU member states to introduce a mandatory exception to copyright law allowing the conversion of works into accessible formats for persons with print disabilities.<sup>248</sup> Secondly, the Marrakesh Regulation, governing the cross-border exchange of accessible format copies between the EU and third countries that are also parties to the Marrakesh Treaty,<sup>249</sup> both of which explicitly refer to the UNCRPD. Thirdly, the EAA, which is aimed at making consumer goods, including books and web content, accessible to persons with disabilities across the European market.

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<sup>245</sup> See GOVERNMENT OF CANADA, Accessible Digital Books – Support for Organisations, available at <https://www.canada.ca/en/canadian-heritage/services/funding/book-fund/accessible-books-organizations.html> (Last visited on November 8, 2025) (the government invested CAD 22.8 million between 2019-2024 in the Accessible Digital Books Initiative).

<sup>246</sup> SUGAMYA PUSTAKALAYA, *supra* note 202.

<sup>247</sup> E.U. Directive 2019/882, *On the Accessibility Requirements for Products and Services*, June 7, 2019, O. J. E. U. L-151/70 ('EAA').

<sup>248</sup> E.U. Directive 2017/1564, *On certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society*, September 13, 2017, O. J. E. U. L-242/6, Recitals 1, 9 and Art. 3.

<sup>249</sup> E.U. Regulation 2017/1563, *On the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled*, O. J. L-242/20.

The EAA adopts an expansive definition of persons with disabilities, extending to persons who have “long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.<sup>250</sup> It applies to publishers and platforms from both public and private sectors across the EU,<sup>251</sup> bringing them under the obligation to comply with accessibility standards for screen reader compatibility, structure, navigation, alt text, and the ePUB 3 format, among others.<sup>252</sup> The scope of the mandate extends to a range of products and services, such as computers, smartphones, tablets, TV sets, banking ATMs and services, payment terminals, e-books and e-readers, e-commerce websites, mobile applications, ticketing machines, and check-in machines.<sup>253</sup> Member states were provided with a transposition period until June 2025, after which they were to apply the requisite measures.<sup>254</sup> Drawing from the UNCRPD and taking forward the endeavour of the Marrakesh Treaty, EAA has been described as the crown jewel of EU accessibility reform.<sup>255</sup>

These broad obligations in the EAA are supported by robust enforcement measures delegated to individual EU member states. Each state has to designate one or more market surveillance bodies or other competent authorities to oversee compliance through regular audits, consumer or advocacy group complaints, warnings, product withdrawal requirements, and other corrective actions when organisations fail to meet accessibility standards.<sup>256</sup> The severity of penalties adopted varies across Member States: Germany allows for fines up to EUR 500,000, while Hungary may impose penalties amounting to five percent of the offender’s net annual turnover.<sup>257</sup> Ireland imposes criminal liability and substantial financial penalties in cases of systemic or wilful breaches, whereas Austria, Belgium, and Hungary may suspend services for non-compliance.<sup>258</sup>

While concerns have been raised about the lack of uniformity in enforcement across Member States, the EU nevertheless presents a good example of a holistic accessibility policy that is characterised by the coexistence and synergy of multiple legislative measures.<sup>259</sup> By requiring new published content to be placed in the market already accessible, the EAA complements the Marrakesh Directive and Marrakesh Regulation and reduces the need for *post facto* conversions.

In addition to making the production of accessible books and digital content *ex ante* a legal mandate, its enforcement framework offers specific benefits. The EAA is integrated with the existing EU market surveillance mechanisms, which allows Member States to utilise pre-existing consumer protection and product safety infrastructures, enhancing administrative efficiency and compliance monitoring.<sup>260</sup> It also promotes legal certainty for economic

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<sup>250</sup> EAA, *supra* note 247, Art. 3(1).

<sup>251</sup> *Id.*, Preamble ¶57.

<sup>252</sup> *Id.*, Art. 4(2), Annex. I.

<sup>253</sup> *Id.*, Art. 2.

<sup>254</sup> *Id.*, Art. 31(2).

<sup>255</sup> Delia Ferri & Kevin Donnellan, *The Implementation of the Marrakesh Treaty in the European Union: An Important Piece in the Accessibility Jigsaw?*, Vol. 49(3), LEGAL. ISSUES ECON. INTEGRATION, 269, 283 (2022).

<sup>256</sup> EAA, *supra* note 247, Art. 19–22.

<sup>257</sup> QUERTUM BLOG, *European Accessibility Act Compliance by Sector: GDPR Lessons and What to Expect in 2025*, available at <https://quertum.net/which-sectors-are-in-focus-under-the-eea-gdpr-lessons-and-what-to-expect-in-2025/> (Last visited on November 8, 2025).

<sup>258</sup> Alex Piccianeri, *A Guide to the European Accessibility Act (EAA)*, PICCIANERI, available at <https://piccianeri.com/guide-european-accessibility-act/> (Last visited on November 8, 2025).

<sup>259</sup> Ferri & Donnellan, *supra* note 255, 283–285.

<sup>260</sup> Regulation 2019/1020, *On market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011*, June 25, 2019, O. J. L-169, Art. 1.

operators by clearly outlining accessibility standards and obligations and linking compliance to established conformity assessment and marking.<sup>261</sup> The EAA requires transparency implemented through public reporting obligations, which ensure a degree of accountability that can incentivise proactive enforcement and expose under-compliance.<sup>262</sup> One of the most robust examples of national enforcement of this law is found in Germany.

Germany has responded to the EAA mandate through proactive implementation by establishing a comprehensive legal architecture. Having transposed the Act into national law in July, 2021,<sup>263</sup> Germany empowers its market surveillance authorities to monitor compliance, conduct inspections, and impose significant financial penalties (up to EUR 100,000 per infringement).<sup>264</sup> It also allows recognised consumer protection and disability organisations to initiate cease-and-desist proceedings under the Unfair Competition Act, creating a mechanism for collective enforcement and empowering civil society actors.<sup>265</sup> The Federal Accessibility Office (*Bundesfachstelle Barrierefreiheit*) was set up to provide detailed guidance, training, and implementation resources to support public and private stakeholders in meeting their obligations.<sup>266</sup> This multi-pronged enforcement structure, combining legal clarity, institutional support, and enforceable penalties, is illustrative of an effective enforcement mechanism of the EAA. This overview presents us with a model that channels political will into proactive implementation and robust enforcement and thus offers a high likelihood for success in removing barriers faced by persons with disabilities.

Despite the RPDA's promotion of accessibility in education, the absence of 'born' accessibility continues to impose on beneficiaries the burden of fulfilling the promise of accessible books. In this regard, the EU's EAA, with its legally mandated born-accessibility model, offers key normative lessons for India, particularly relating to its enforcement mechanism—an area that is a clear weak point in the Indian regime.

To begin with, the enforcement architecture of the EAA, which comprises designated regulatory bodies, structured monitoring, and a dissuasive penalty structure, provides a strong contrast to the RPDA framework in India. Despite its progressive ideals, the Indian model suffers from limited and uneven implementation due to institutional and financial issues.<sup>267</sup> Under the EAA, Member States are required to appoint dedicated market surveillance authorities which are empowered to carry out audits, investigate complaints, issue binding corrective orders, and impose penalties for non-compliance.<sup>268</sup> On the other hand, the Indian framework vests powers primarily in administrative authorities like the Chief Commissioner and State Commissioners; many of which posts remain unfilled and largely ineffective.<sup>269</sup> Under Section 79 of RPDA, State Commissioners are in charge of monitoring the implementation of the statutory provisions, and yet, continued delays persist. This is evidenced by the Supreme Court's interventions in *Seema Girija Lal v. Union of India*, which exposed how these roles often exist as paper institutions, without the necessary autonomy or enforcement powers.<sup>270</sup>

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<sup>261</sup> EAA, *supra* note 248, Arts. 13–20.

<sup>262</sup> EAA, *supra* note 248, Arts. 29–30.

<sup>263</sup> Die Gesetz zur Stärkung der Barrierefreiheit (Barrierefreiheitsstärkungsgesetz), 2021 (Germany).

<sup>264</sup> *Id.*, §§ 26–27.

<sup>265</sup> Gesetz gegen den unlauteren Wettbewerb, 2004, §§ 8–9 (Germany).

<sup>266</sup> Bundesfachstelle Barrierefreiheit, *Guidance on Implementation of the BFSG*, available at [https://www.bundesfachstelle-barrierefreiheit.de/EN/Home/home\\_node.html](https://www.bundesfachstelle-barrierefreiheit.de/EN/Home/home_node.html) (Last visited on missing).

<sup>267</sup> See Part V.A on “Legal Framework”; Nazim & Ali, *supra* note 195.

<sup>268</sup> EAA, *supra* note 247, Art. 24–27.

<sup>269</sup> Johari, *supra* note 178.

<sup>270</sup> *Seema Girija Lal v. Union of India*, W.P. (C) 29329 of 2021, ¶¶5–7.

A second important distinction is the reliance on voluntary mechanisms and aspirational goals, as opposed to EAA's firm and enforceable mandates backed by mandatory compliance deadlines.<sup>271</sup> While India's Accessibility India Campaign (Sugamya Bharat Abhiyan) and guidelines like GIGW 3.0 show policy intent, in operation, they are merely voluntary schemes that cannot compel action and change in a country as large as India. The EAA has relied on uniform timelines and clear standards for implementation. The RPDA features provisions that are of uncertain binding value and lack national-level deadlines for accessibility rulemaking and enforcement. It is, thus, unsurprising that no state in the country has yet successfully implemented comprehensive barrier-free regimes.<sup>272</sup> The frequent intervention by the judiciary shows that, where implementation does occur, it is largely reactive and complaint-driven, with minimal spillover impact across sectors despite court victories.<sup>273</sup>

This reliance on voluntary mechanisms with little success is reflected in the domain of copyright law, where accessibility of copyrighted works remains an exception rather than the norm. The law permits conversion of copyrighted material into accessible formats for the benefit of persons with print disabilities, yet this burden is shouldered by the intended beneficiaries themselves, along with charities. In the absence of any enforceable legal duties on the publishing corporations, persons with disabilities continue to face obstacles. As the case of Avichal demonstrates, courts have been reluctant to compel accessibility even when public interest is evident, instead favouring copyright protections and commercial interests.<sup>274</sup> This exposes the fragility of rights in the absence of institutional support. Without a statutory requirement for publishers to produce 'born' accessible content or a funded framework to operationalise copyright exceptions, the legal right remains practically unenforceable.

The Indian regime also places heavy reliance on reservations as a disability inclusion mechanism. While the RPDA mandates four percent job reservation and five percent education reservation, these measures often overshadow the imperative for systemic accessibility. Commentators have noted that the absence of disaggregated reservation quotas across disability types reflects legislative inertia and weak policy imagination, further limiting meaningful access.<sup>275</sup> Such reservations are often treated as ends in themselves, rather than a part of broader social justice architecture integrating infrastructure, training, and universal design.<sup>276</sup>

Prior empirical scholarship has exposed the severe limitations in India's state-level implementation measures, as well as the lack of awareness among stakeholders of the beneficial provisions available to them.<sup>277</sup> Based on this, Girish and Vaidyanathan argue that India's copyright framework is already broadly aligned with international standards following the Marrakesh Treaty, and that no further amendments to copyright or disability law are strictly

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<sup>271</sup> EAA, *supra* note 247, Art. 31.

<sup>272</sup> Johari, *supra* note 178.

<sup>273</sup> Anchal Bhatheja, *From Parks to Paperwork - Disability Rights in India Need a Cultural Push*, THE WIRE, May 15, 2025, available at <https://m.thewire.in/article/rights/from-parks-to-paperwork-disability-rights-in-india-need-a-cultural-push>. (Last visited on September 14, 2025).

<sup>274</sup> Avichal, *supra* note 205, ¶3.

<sup>275</sup> Sanjay Jaain & Mallika Jain, *Revisiting the Conceptual Terrains of the Right to Accessibility in India: The Role of Judicial Enforcement*, Vol. 13(4) MDPI RIGHTS, 54 (2024), available at <https://www.mdpi.com/2075-471X/13/4/54> (Last visited on September 14, 2025).

<sup>276</sup> *Id.*, 5.

<sup>277</sup> Anjana Girish & Saraswathy Vaidyanathan, *Visually Impaired Persons and Access to Copyrighted Works: The Indian Roadmap*, Vol. 18 INDONESIAN J. INT'L L. 501, 513-515 (2021) (carrying out an empirical study of implementation of copyright disability exception in institutions in the state of Kerala).

necessary. They instead argue for a greater focus on strengthening institutional capacity and awareness in order to enhance delivery mechanisms.<sup>278</sup>

While the implementation issues diagnosed are accurate, this Article argues that implementation alone is insufficient to secure for persons with disabilities the meaningful realisation of the right to read. The existing model that relies solely on post-publication exceptions and makes access almost discretionary must necessarily be complemented by a forward-looking legal mandate of born accessibility. Robust enforcement mechanisms must complement this by placing affirmative obligations on publishers as well. In the absence of this greater structural overhaul to establish enforceable compliance frameworks, implementation efforts suffer the risk of remaining reactive and dependent on charitable or *ad hoc* initiatives.

Altogether, the normative lesson is clear: India needs to move beyond tokenistic compliance and reservations-dominated inclusion. What's needed is a legally mandated born-accessibility model with a dedicated accessibility authority endowed with enforcement powers, adequate funding, and statutory timelines, drawing inspiration from the EAA model. Only then can India move from reactive rights enforcement through litigation to a proactive and systemic realisation of accessibility rights.

### VIII. CONCLUSION

The Marrakesh Treaty and the national statutory exceptions making room for interests of persons with disabilities in copyright law are undoubtedly a radical shift in copyright history, bringing into focus the impact of the relentless pursuit of copyright's economic interests on various disadvantaged groups. It is a positive sign that most countries have expanded beyond the minimum requirements of the treaty and adopted broader exceptions open to people with many kinds of disabilities and across formats.

However, a more substantive and holistic approach to equal rights for persons with disabilities requires reforms that go beyond removing legal hurdles and eliminate the systemic promotion of profit interests over fundamental human rights. It is not enough merely to avoid being penalised for exercising one's right to read. The law should be able to support and enable persons with disabilities to partake in cultural exchange on equal terms as those without disabilities such that they are able to lead a fulfilling life. The existence of logistical, financial, and temporal obstacles impedes this goal. Moreover, law's acceptance and endorsement of the existing impediments plaguing persons with disabilities indirectly signifies the normalisation of subordination of the entire group.

The adoption of born accessibility mandates by EU states shows that it is not only possible but very much practical for books (and other consumer goods) to be made for use by all persons. The conversion regime can support this mandate by making accessible the books that are no longer in print, but without accessible publishing going forward, the constitutional promise of equal rights to read and obtain an education shall remain unfulfilled.

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<sup>278</sup> *Id.*, 515–520.