International Journal of Legal Research and Development
Volume 6 (2026), pages 34–42 e-ISSN 2581-7434

RESEARCH PAPER

Copyright, Consent and Survivor Narratives: Protecting Trafficking Survivors in Documentary and Digital Media

Nanda Prasad
Research Scholar, Noida International University
Dr. Ram Gulam
Associate Professor, Noida International University
ORCID: 0009-0009-3910-6818

Article details
Published
27 November 2026
DOI
10.5281/zenodo.24588405
Review
Peer-reviewed and refereed
Licence
CC BY-NC 4.0
Keywords
Human Trafficking
Copyright
Survivor Narratives
Informed Consent
Privacy
Documentary Ethics

Abstract
Digital media like documentaries on the one hand expose human trafficking but at the same time carry risks of unauthorised use of survivors' stories. The paper examines whether the Indian laws give enough protections and control to the survivors' stories in their hands as they enter the world of digital media and proposes safeguards that are in consonance with public interest reporting. The method of study is doctrinal and comparative, and the sources are legislation, judgments, notifications and ordinances. The paper contains a detailed study of Copyright Act, Indian Contract Act, Bharatiya Nyaya Sanhita (hereinafter referred to as BNS 2023), Digital Personal Data Protection Act (hereinafter referred to as DPDPA, 2023) etc. as well as relevant international conventions like the Palermo Protocol, UN guidelines, EU data protection guidelines etc. In a biography/memoir or an interview, the possession of copyright by the producer does not make the producer the owner of the facts. Conversely, this copyright does not give absolute right to overlook victim's confidentiality. The protection given is not the same for adult victims and minor victims, while the protection available to minor victims is expressly given, the same is not the case with adult victims. The paper gives recommendation of a framework wherein there is separate requirement for permissions for recording as well as for publication, the licences are limited by safeguards in addition to other safeguards available.

1. The Problem: Permission to Record Is Not Permission for Every Use

Consider a hypothetical documentary interview with an adult survivor of labour trafficking. She agrees to appear under a pseudonym at a community screening. Months later, an identifiable extract becomes a sponsored social-media advertisement. Her consent to the interview, the producer's ownership of the film and the legality of identifying her are different questions. Treating a signed release as the answer to all three conceals the actual dispute: who may decide how a person's experience travels after it has been recorded?

The distinction matters even where the documentary seeks to expose exploitation. A survivor may want to criticise traffickers, challenge official conduct or describe recovery. Protection that automatically excludes her from public discussion would repeat the denial of agency that a protective framework should resist. Conversely, a willingness to speak does not establish willingness to disclose an address, expose relatives or endorse a fundraising campaign. The relevant unit of consent is a sufficiently explained use, rather than the survivor's entire life story.

Documentary ethics already recognises competing responsibilities. Aufderheide, Jaszi and Chandra's study of forty-five United States filmmakers identified tensions between obligations to subjects, audiences and production demands.[1] That study does not establish Indian industry practice. It does, however, help frame the doctrinal problem: legal ownership of a finished work and ethical responsibility towards its participants do not necessarily coincide. WHO interviewing guidance similarly treats confidentiality and informed consent as substantive safeguards, rather than paperwork.[2]

This paper examines how Indian copyright, contract, privacy and identity-protection rules interact. Its method is doctrinal and its legal cut-off is 30 October 2026; no interviews, surveys or examination of production contracts are claimed. International material supplies interpretive and ethical context, not directly enforceable Indian media rules. The contribution is a framework connecting separate permissions and remedies across production, release and reuse. Its effectiveness remains to be tested with survivors, filmmakers and legal-service providers.

The problem addressed is therefore a mismatch between legal categories, rather than an assertion that existing scholarship has ignored survivors. An infringement inquiry asks about protected expression and restricted acts; an identity dispute asks what disclosure exposes; a consent dispute asks what participation authorised. A survivor may succeed on one ground and fail on another. Keeping these inquiries separate also prevents the proposed protection from becoming a proprietary right over history, which could obstruct other witnesses, researchers and survivors telling their own accounts.

Although some authorities and ethical guidance concern women or sexual exploitation, the proposed framework extends to survivors of all genders and forms of trafficking. That extension is normative; the paper does not assume that identical statutory protections already cover everyone.

2. What Copyright Can Protect

The starting point is the distinction between an experience and its expression. In *RG Anand v Delux Films*, the Supreme Court separated unprotected ideas and subject matter from their particular expression.[3] Applied here, a survivor cannot acquire a copyright monopoly over the fact that trafficking occurred. An original memoir or script may nevertheless attract protection.

[1] Pat Aufderheide, Peter Jaszi and Mridu Chandra, *Honest Truths: Documentary Filmmakers on Ethical Challenges in Their Work* (2009) <https://cmsimpact.org/wp-content/uploads/2016/08/Honest-Truths-Documentary_Filmmakers_on_Ethical_Challenges_in_Their_Work-.pdf>.

[2] Cathy Zimmerman and Charlotte Watts, *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women* (2003) 4, 18–20 <https://cdn.icmec.org/wp-content/uploads/2023/01/WHOREC1.pdf>.

[3] *RG Anand v Delux Films* (1978) 4 SCC 118 [46]; Copyright Act 1957, s 13(1)(a).

A filmmaker's ability to report an event therefore differs from permission to reproduce the survivor's protected account of it. Calling both a person's 'story' obscures this distinction.

Authorship also requires attention to what was created together. In *Najma Heptulla v Orient Longman Ltd*, the Delhi High Court, deciding interim injunction applications, considered Maulana Azad and Humayun Kabir's intellectual collaboration in producing *India Wins Freedom*. Its assessment supported joint authorship, rather than treating the person who supplied the English language as necessarily the sole author.[4] The analogy supports examining a survivor's creative contribution; it does not establish that every interviewee jointly owns a documentary. Collaborative composition of a text must be distinguished from supplying information or appearing on camera.

The Copyright Act identifies the producer as author of a cinematograph film, subject to the statutory ownership framework. Copyright in the film remains distinct from copyright in underlying works.[5] Consequently, a survivor may hold rights in a separately authored narrative while lacking ownership of the recording. A production agreement should identify each contribution before allocating rights. The survivor's manuscript, the interview recording, subtitles and publicity photographs should not be treated as one undifferentiated asset. This inventory makes negotiations intelligible without presuming that every contribution belongs to the same person.

Assignments require signed writing and specification of the work, rights, duration and territorial extent; statutory defaults apply to omitted duration and territory.[6] A limited licence can often meet the production's needs without transferring every exploitable interest. For example, permission to incorporate specified passages into a named documentary need not include unrelated advertising or a fictional adaptation. The contract should reserve those decisions expressly. A release authorising use of someone's image should likewise identify whether it also purports to transfer copyright; the two operations should not be silently combined.

Section 57 preserves authorship and integrity interests even after assignment, subject to its requirements.[7] It can matter where editing distorts a survivor's authored work in a manner prejudicial to honour or reputation. Yet a person who is merely depicted cannot assume the section supplies a remedy. Nor does every unwelcome edit satisfy its threshold. An agreed procedure for reviewing factual inaccuracies and exposure risks may therefore protect interests that a contested moral-rights claim would reach only imperfectly. Attribution also needs care: public credit should not defeat an agreed pseudonym or legal anonymity.

Performers' rights offer another possible, but conditional, route. Sections 38A and 38B protect qualifying performances; written consent to incorporation in a film substantially affects subsequent objections, while the statute preserves specified royalty and moral-rights interests.[8] An interviewee's status must be assessed under the definitions of performance and performer,

[4] *Najma Heptulla v Orient Longman Ltd* AIR 1989 Del 63 [25]–[30] (interim order).
[5] Copyright Act 1957, ss 2(d)(v), 2(uu), 13(4), 17.
[6] ibid ss 18, 19(1)–(6), 30, 30A. Sections 19(5) and 19(6) supply the five-year and India-only defaults respectively; section 19(3) concerns royalty and other consideration.
[7] ibid s 57(1).
[8] ibid ss 2(q), 2(qq), 38, 38A, 38B. The proviso to section 2(qq) preserves the application of section 38B(b) to the casual or incidental appearances described there.

including the qualification concerning casual or incidental film appearances. Filming a person does not itself settle that question. The practical lesson is to negotiate protections without making them depend entirely on uncertain classification as author or performer.

Creative participation should nevertheless be recognised where it occurs. If a survivor helps write narration, selects an original arrangement of events or contributes a pre-existing work, the production should document that contribution and its agreed treatment. Calling everyone a 'participant' may conceal authorship just as calling everyone a 'co-author' may exaggerate it. A promise of consultation or payment can stand on its contractual terms even when the contribution does not satisfy copyright requirements. This offers a practical route for respecting participation without stretching statutory categories.

3. Consent, Dependence and the Survivor's Continuing Agency

Anti-trafficking law itself requires a careful distinction between different meanings of consent. Article 3(b) of the Palermo Protocol makes consent to intended exploitation irrelevant where the specified coercive or deceptive means have been used. Article 6 addresses protection of privacy and identity within its stated qualifications.[9] Neither provision makes an adult survivor incapable of consenting to later expression. A rule preventing an offender from relying on coerced agreement must not become a reason to disregard the survivor's decisions about participation, publicity or advocacy.

In *Prajwala v Union of India*, decided on 29 May 2026, the Supreme Court framed rehabilitation through dignity and agency in the context of trafficking for commercial sexual exploitation. Its Victim Protection Plan gives informed consent a central role, with reasoned exceptions concerning safety and protection.[10] The judgment also requires victims to be excluded from photography and videography of rescue sites.[11] These directions cannot be converted into a holding that survivors own documentaries about them. They do support a narrower inference: protective institutions should not treat access to a survivor as an institutional entitlement.

The Indian Contract Act supplies relevant safeguards through free consent, undue influence and the remedies applicable to vitiated agreements.[12] Dependence on a shelter or organisation may be relevant evidence, but does not automatically invalidate every release. The inquiry concerns the actual relationship, domination of will, unfair advantage and other statutory requirements. A filmmaker introduced by a welfare organisation should therefore clarify who controls services and whether refusal affects assistance. An adult's distress calls for appropriate support and timing, not an unsupported presumption of permanent incapacity.

WHO guidance recommends explaining an interview's purpose, intended uses and the participant's ability to decline questions or stop participation.[13] Translating that ethical guidance into a production process requires more than a signature. The proposed process would explain

[9] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000) 2237 UNTS 319, arts 3(b), 6(1). The text is reproduced in *Prajwala v Union of India* 2026 SCC OnLine SC 1053 [1], [121].
[10] *Prajwala* (n 9) [348]–[352], [362(a)(i)–(iii)].
[11] ibid [362(c)(vii)].
[12] Indian Contract Act 1872, ss 13–19, 19A (especially s 16 on undue influence).
[13] Zimmerman and Watts (n 2) 19–20.

expected audiences, commercial distribution, translation and identification risks in a language the participant understands. A chosen support person or independent adviser could help, without replacing the survivor's decision. Consent should be revisited when the proposed use materially changes; repeated requests for identical permission would add paperwork without necessarily improving understanding.

Understanding can be checked through concrete alternatives. The interviewer might distinguish an audio account with an altered voice from identifiable video, or a screening for a limited audience from unrestricted online release. The participant could explain the chosen arrangement in her own words, with misunderstandings corrected before recording. This proposed safeguard assesses the explanation, rather than testing literacy. Copies of the agreed terms should be accessible to the survivor, and interpreters should understand their confidentiality obligations.

Withdrawal requires equally precise treatment. Ending an interview, withdrawing permission for an unreleased scene, terminating a licence under its terms and removing an already distributed film are different acts. A contract should distinguish them, including deadlines and responses to newly discovered danger. Producers should promise measures within their control, such as halting promotion, replacing an extract or notifying distributors. They should not promise complete retrieval from the internet. Nor should a withdrawal clause quietly require repayment of essential support, making the supposed choice practically unavailable.

4. Identity Protection beyond Copyright

Privacy supplies a separate legal basis. *Puttaswamy* establishes the constitutional significance of privacy, dignity and individual autonomy.[14] In *R Rajagopal v State of Tamil Nadu*, the Supreme Court addressed publication of private matters, recognised a public-record exception, and qualified that exception for women subjected to sexual assault, kidnapping, abduction or similar offences.[15] These authorities undermine the assumption that truthful information is always freely publishable. However, the particular cause of action and relief against a private producer still require legal analysis; constitutional language is not a substitute for identifying the applicable remedy.

Statutory anonymity is also uneven. Section 72 of the Bharatiya Nyaya Sanhita, 2023 protects identity in relation to specified sexual offences, with exceptions including the victim's written authorization. Trafficking under section 143 is not itself one of the listed offences.[16] The protection therefore cannot be described as an automatic statutory anonymity rule for every adult trafficking survivor. Other offences, judicial directions, privacy and confidentiality obligations may apply. The gap is especially relevant when discussing labour trafficking or survivors whose circumstances fall outside the sexual-offence provisions.

Nipun Saxena v Union of India explains why removing a name is insufficient: indirect information can reveal a protected person's identity.[17] For documentary production, this means evaluating combinations of clues. A recognisable relative, workplace, school uniform or distinctive location

[14] *KS Puttaswamy v Union of India* (2017) 10 SCC 1 (nine-judge bench).
[15] *R Rajagopal v State of Tamil Nadu* (1994) 6 SCC 632 [26(1)]–[26(2)].
[16] Bharatiya Nyaya Sanhita 2023, ss 72(1), 72(2)(b), 143. Section 72(1) lists offences under sections 64–71.
[17] *Nipun Saxena v Union of India* (2019) 2 SCC 703 [11]–[12], [43].

may undermine facial blurring. A useful review asks whether someone in the survivor's community could identify the person, rather than whether an unfamiliar viewer could do so. This is an application of the judgment's reasoning to production choices, not a judicially prescribed technical checklist.

Children require additional safeguards. Section 23 of the Protection of Children from Sexual Offences Act, 2012 restricts identifying media reports and permits disclosure through the Special Court only where its statutory conditions are satisfied. Section 74 of the Juvenile Justice Act, 2015 separately protects covered children in reports concerning an inquiry, investigation or judicial proceeding, subject to its own exception.[18] Parental agreement, an organisation's permission or a commercial release cannot displace these requirements. Children's views should inform protective decisions, but assent does not independently legalise prohibited publication.

Adults' lawful choices also deserve protection. A survivor who wishes to speak publicly should receive an explanation of risks and available alternatives. Institutions should not make anonymity a universal condition of being heard. Equally, choosing identification for one intervention should not be represented as consent to every later disclosure. The proposed standard combines a lawful opportunity to speak with separate scrutiny of information about children, relatives and other survivors. One participant cannot surrender another person's protection.

Budhadev Karmaskar v State of West Bengal provides a related warning against sensational rescue coverage. The Supreme Court's order of 19 May 2022 addressed protection of sex workers' identities during arrest, raid and rescue operations.[19] Its setting must be respected: consensual adult sex work and trafficking are not interchangeable categories. Documentary narration that presents every filmed sex worker as trafficked can misdescribe the person while exposing them. Protective reporting therefore requires accuracy about legal status as well as caution about names and images.

5. Digital Circulation and the Limits of Data Remedies

The Digital Personal Data Protection Act, 2023 requires particular temporal care. The commencement notification of 13 November 2025 places its core processing, consent and data-principal provisions in the group commencing eighteen months after publication. Those provisions are not yet operative at this paper's cut-off.[20] It would therefore be misleading to offer a survivor an immediately available statutory erasure claim under section 12. Institutions can nevertheless build compatible practices now, while relying on presently applicable legal and contractual protections.

Once operative, section 6 addresses consent and withdrawal, while section 12 provides qualified correction and erasure rights. Withdrawal does not retrospectively invalidate earlier lawful processing. Section 3(c)(ii) also excludes specified data made publicly available by the person

[18] Protection of Children from Sexual Offences Act 2012, s 23; Juvenile Justice (Care and Protection of Children) Act 2015, s 74; *Nipun Saxena* (n 17) [43(8)].

[19] *Budhadev Karmaskar v State of West Bengal* (2022) 20 SCC 220 (recommendation (vi), order dated 19 May 2022).

[20] Ministry of Electronics and Information Technology, Notification GSR 843(E), Gazette of India, Extraordinary, pt II, s 3(i), cl (c) (13 November 2025) <https://www.meity.gov.in/static/uploads/2025/11/c56ceae6c383460ca69577428d36828b.pdf>.

concerned, or by someone legally obliged to publish it.[21] Voluntary public storytelling may consequently complicate a later data-protection claim. The exclusion is not a general statement that anything found online is unrestricted. Its interaction with documentary participation requires attention to who made the information public and in what circumstances.

Data protection and copyright should therefore be analysed together without assuming that one automatically extinguishes the other. A producer may possess rights in a film while facing restrictions on processing identifying information. Conversely, disagreement with a documentary does not establish entitlement to erase it. Secure archives, limited access and an agreed retention policy would reduce unnecessary exposure before that dispute arises. Retention needed for lawful evidence preservation should be distinguished from unrestricted circulation of raw footage. Deleting publicity copies need not require destroying material subject to a preservation obligation.

Intermediary remedies have also changed. Following the February 2026 amendments, rule 3(2)(b) requires reasonable and practicable removal or access-disabling measures within two hours of a complaint concerning its specified categories of intimate, impersonation or morphed content.[22] This is not a universal two-hour takedown right for every objectionable documentary interview. An authentic, non-intimate clip exposing a survivor's identity may require another grievance route, an applicable statutory claim or judicial relief. Advice that confuses these routes can waste time when identification is spreading.

The amendments additionally address realistic synthetic media through duties concerning unlawful generation, labelling and provenance.[23] A label does not itself cure unlawful use of a survivor's identity. For commissioned productions, the proposed contract should separately address voice cloning, synthetic reenactments and supply of recordings for model training. These uses should not be inferred from permission to edit an interview. Distribution records should identify authorised versions and recipients, making correction or suspension requests actionable instead of leaving the survivor to locate every commercial partner.

Those records should themselves be designed carefully. A register linking a pseudonym to a legal name can undo the protection it was created to administer. The proposed practice would separate identity evidence from ordinary production files, restrict access to authorised personnel and record disclosures. Requests for correction should identify the disputed item without routinely requiring a survivor to repeat the underlying account. Accountability should create evidence of permissions and responses while collecting as little additional sensitive information as practicable.

[21] Digital Personal Data Protection Act 2023, ss 3(c)(ii), 6(4)–(6), 12. These provisions must be read with the commencement notification cited in the preceding note.

[22] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3(2)(b), as amended by Notification GSR 120(E) (10 February 2026) (effective 20 February 2026). See Ministry of Electronics and Information Technology, *Frequently Asked Questions on the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026* (10 February 2026) questions 3, 18 <https://www.meity.gov.in/static/uploads/2025/10/065b6deb585441b5ccdf8be42502a49c.pdf>.

[23] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, rr 2(1)(wa), 3(3), 4(1A) (as amended February 2026); Ministry of Electronics and Information Technology (n 22) questions 19–26.

6. A Workable Framework and Its Limits

The proposed framework begins with a brief, intelligible agreement separating recording, identification, incorporation in the documentary and additional exploitation. It should identify permitted audiences and distribution channels, explain payment, and preserve the survivor's own ability to recount the experience. Where protected material is licensed, the licence should state its scope and any termination conditions. A contractual promise to respect privacy should remain meaningful even if a court later finds no copyright in the contribution. These protections are proposed terms, not a claim that Indian law already mandates one standard release.

Before release, participants should receive an opportunity to flag factual mistakes, identification risks and departures from the agreed use. This review need not confer control over every editorial judgment. A documented disagreement can distinguish a request to remove an exposed address from a demand to suppress criticism of a public institution. Where an urgent threat arises, distribution can be temporarily paused while the producer and an independent adviser assess proportionate safeguards. Any such process must comply with existing anonymity rules, rather than negotiate around them.

Economic terms should be equally explicit. Authorship credit, payment for creative work, reimbursement of participation costs and a negotiated revenue share serve different purposes. No universal entitlement to a share of documentary profits is asserted here; applicable statutory royalties must be assessed separately. Nevertheless, an agreed share can recognise a substantial contribution where commercially appropriate. Compensation should not depend on supplying graphic details or maintaining a predetermined account. Accounting rights matter because a promise of 'net profits' offers little practical value unless deductions and reporting are understandable.

The strongest objection is that continuing consent could undermine documentary independence. Investigations may expose abusive institutions whose representatives would welcome a veto. Journalism cannot depend on every subject approving its conclusions. Copyright itself recognises fair dealing, including for criticism, review and reporting current events, subject to the statutory conditions.[24] That exception concerns infringement; it does not automatically excuse unlawful identification or breach of a separate obligation. The response should therefore distinguish reporting independently established facts from expanding the use of testimony obtained under a specific assurance.

For exceptional publication without permission, this paper proposes recorded reasons explaining the public interest, the necessity of identification and the inadequacy of less intrusive alternatives. Such an assessment cannot override an express statutory prohibition. It can, however, discipline choices where the law requires balancing. Courts and complaint bodies should consider focused relief where available: redacting a name, replacing a thumbnail, correcting a misleading edit or restraining an unauthorised advertisement may address the harm without suppressing an entire investigation. A blanket veto and a blanket release are both poor substitutes for examining the contested use.

[24] Copyright Act 1957, s 52(1)(a).

Finally, remedies must be reachable. Producers and distributors should designate a contact able to suspend their own promotional material promptly and coordinate requests to recipients. A survivor should be able to use a trusted representative without repeatedly circulating identity documents. Depending on the claim, copyright remedies, contractual relief, privacy proceedings, statutory complaints and intermediary mechanisms may be relevant.[25] The proposal adds independent assistance and a record of decisions; it does not assume that a new institution alone will solve enforcement. Pilot implementation should assess cost, response times and survivors' experience before broader adoption.

Such evaluation should measure more than the number of signed forms. Relevant questions include whether participants understood distribution, whether refusal affected assistance, how identification concerns were resolved and whether agreed payments arrived. Researchers would need separate ethical approval and consent where required. Film reception or audience reach cannot substitute for evidence that participants retained meaningful choices. These questions define a future empirical agenda, rather than findings that this doctrinal paper can claim to have established.

7. Conclusion

Survivor narratives cannot be protected adequately by deciding only who owns the documentary. Ownership allocates rights in particular works; it does not settle identification, consent or the justification for later uses. Indian law offers important but uneven protections, with distinct rules for children, specified sexual offences, authors and performers. The implementation calendar of data-protection law further limits what can presently be promised.

Meaningful protection requires decisions that remain intelligible after filming ends: what was licensed, who may be identified, which uses were explained and what happens when circumstances change. Carefully limited agreements, review of exposure risks and proportionate remedies can connect these decisions without giving every subject unrestricted editorial control. The objective is a legal environment in which survivors can participate in public debate and creative work without having to surrender all future choices about their expression and personal exposure.

How to cite this paper: Nanda Prasad and Dr. Ram Gulam, 'Copyright, Consent and Survivor Narratives: Protecting Trafficking Survivors in Documentary and Digital Media' (2026) 6 International Journal of Legal Research and Development 34.

[25] ibid ss 55, 57; *Rajagopal* (n 15) [26(1)]; Indian Contract Act 1872, ss 19, 19A. The availability and scope of each remedy depend on the claimant's rights and the facts.