

WHOSE STORY IS IT ANYWAY: TRUE CRIME TAPES AND THEIR IMPACT ON VICTIMS' RIGHTS

Simone Avinash Vaidya * and *Arohi Malpani***

ABSTRACT

This paper explores the complex ethical and legal challenges posed by the true crime genre, particularly in the context of documentaries, and argues for the creation of a legal framework to protect victims' rights. The authors integrate a diverse set of sources, primarily analysing legislations and judicial decisions that highlight loopholes in the existing statutory scheme. It assesses the genre's impact on audiences, identifying instances of exploitation, shaping of public opinion and interference with judicial proceedings. This is further strengthened through a comparative perspective, with the authors juxtaposing American jurisprudence on notoriety-for-profit with the sheer lack of Indian recognition of victims' rights.

*Simone Avinash Vaidya is a second-year B.A.LL.B. (Hons.) student at the Maharashtra National Law University, Mumbai. The author may be reached at 2023096@mnlumbai.edu.in.

**Arohi Malpani is a second-year B.A. LLB. (Hons.) student at the Maharashtra National Law University, Mumbai. The author may be reached at 2023016@mnlumumbai.edu.in.

This paper follows a four-part structure, closely representing the various acts of a documentary- the set-up, rising action, crisis and resolution. The Set-Up introduces the true crime genre as a cultural phenomenon, blending factual recounting with dramatization, often commodifying victims' trauma for entertainment. The Rising Action explores the unique challenges posed by true crime documentaries, focusing on the interplay between privacy, publicity rights, and commercial exploitation. It draws on comparative frameworks, demonstrating the need for safeguards that balance the freedom of expression with victims' rights and dignity, while preventing interference with judicial proceedings. The Crisis critiques existing laws that fail to regulate digital and over-the-top (OTT) platforms where true crime thrives. It portrays the inadequacies of current censorship mechanisms and their inability to safeguard victims' rights or prevent the commodification of trauma. Finally, the Resolution advocates for comprehensive, victim-centric legislation tailored to the true crime genre. It puts forth recommendations, seeking to fill the legal gaps showcased throughout the article. Through this structured approach, the authors explore the legal contours of true crime documentaries and argue the need for a sui generis law governing the coverage of crime in the media.

Keywords: *Media Law, Posthumous Rights,
Victim Protection, True Crime Documentaries.*

I. ACT 1: THE SET-UP

INTRODUCTION

“If she is alive, then I take back all the things that I have said. Because then I think she is very manipulative and she is a very, very naughty girl.”¹

The Buried Truth was released on Netflix in February 2024, revolving around a case that involved the disappearance and alleged murder of Sheena Bora, a twenty-five-year-old woman from Mumbai. The docuseries gives a platform to Indrani Mukherjea, media mogul, mother of the victim and prime accused in the case. Mukherjea expertly manoeuvres this forum to her benefit by coolly dismissing the allegation as “stupid”,² while the trial continues, thirteen years after Bora’s disappearance. While The Buried Truth may be a riveting watch, it reflects a dangerous trend of sensationalisation and dramatisation of real-life crimes for entertainment and commercial purposes.

True crime is a genre of literary, film and podcast media depicting non-fiction narratives of real-life crimes.³ In recent times, its raging popularity has been characterised as a “cultural phenomenon”,⁴ and such viewership patterns are prevalent in India as well. An analysis undertaken by Ormax Media indicates that true crime shows constitute

¹Episode 4, *The Indrani Mukherjea Story: Buried Truth* (2024), Netflix.

²ibid at Episode 6.

³Whitney Phillips, ‘The True Crime Genre is Popular, but is it Ethical?’ (journalism.uoregon.edu, 28 August 2023) <journalism.uoregon.edu/news/true-crime-genre-ethics> accessed 19 December 2024.

⁴Joy Wiltenburg, ‘True Crime: The Origins of Modern Sensationalism’ (2004) 109 *The American Historical Review* 1377.

40%, or the largest genre share of all fifty-two documentaries released across major streaming platforms in India since 2019.⁵

While these shows have the potential to be a force for good, the commodification of victims' stories often blur the line between justice and exploitation. Various legal considerations emerge as regulators and filmmakers alike are compelled to maintain the balance between ethical narration and freedom of expression.⁶ True-crime documentaries present a set of distinct challenges that are unaddressed by the present legal framework, leaving no legal recourse for those aggrieved by the depiction of crime and real experiences in these films.

This paper highlights the various deficiencies and lacunae in the enforcement of victims' rights in true-crime storytelling through the lens of a privacy-publicity dilemma, the anatomy of a media trial, and the inherent unconscionability of notoriety-for-profit. Placing the spotlight on true crime documentaries in particular, it identifies the flaws in the existing legal framework, particularly the Cinematograph Act, 1952 and the Information Technology Act, 2000. The authors argue the pressing need for a *sui generis* law regulating the true-crime genre as a whole, concluding with suggestions and recommendations.

II. ACT 2: THE RISING ACTION

UNIQUE CHALLENGES PRESENTED BY TRUE CRIME DOCUMENTARIES

A. *The Privacy-Publicity Dilemma in True Crime Media*

⁵Swayam Kumar & Soumya Vats, 'Bundy to Burari: Adapting True Crime Documentaries to the Indian Context' (ormaxmedia, 31 May 2024) <ormaxmedia.com/insights/stories/bundytoburari.html> accessed 18 December 2024.

⁶Justin Burnworth, 'Making A Constitutional "Son of Sam" Law: Netflix's Booming True Crime Business', (2022) 49 Hastings Const. L.Q. 3, 4.

True crime media, while captivating, presents complex challenges at the intersection of privacy, publicity rights and the justice system. The *Right to Privacy* has been widely recognised as the 'right to be left alone,' a concept rooted in the seminal works of Justice Louis Brandeis and Samuel D. Warren.⁷ Building on this foundation, Dean William L. Prosser delineated privacy into four distinct categories –

- 1) Intrusion into private affairs;
- 2) Public disclosure of embarrassing private facts about the plaintiff;
- 3) False publicity of the plaintiff; and
- 4) Appropriations for the defendant's advantage of the plaintiff's name or likeness.⁸

While the first three categories deal with protecting individuals from direct invasions into their personal lives, the fourth category of appropriation has evolved into a distinct legal doctrine of the *Right to Publicity*. Introduced in 1954 by Melville B. Nimmer, the right to publicity reflects a shift in focus from safeguarding personal privacy to recognising the commercial value of an individual's identity.⁹ Nimmer envisioned this right as a means for individuals to control and benefit from the use of their persona, particularly in commercial contexts.

Nimmer's understanding of the right of publicity was cemented in the U.S. case of *Haelan Laboratories Inc. v. Topps Chewing Gum Inc.*¹⁰ where the Court upheld the plaintiffs' exclusive rights to use players' images, establishing a separate cause of action for publicity rights. In India, the jurisprudence surrounding the right to publicity has gained prominence, especially in Justice Sanjay Kishan Kaul's concurring opinion in the *Puttaswamy*¹¹ judgement. Justice Kaul emphasised that

⁷Samuel D. Warren and Louis D. Brandeis, 'The Right to Privacy' (1890) 4(5) Harvard Law Review.193, 207.

⁸William L. Prosser, 'Privacy' (1960) 48 California Law Review. 383, 398-401.

⁹Melville B. Nimmer, 'The Right of Publicity' (1954) 19 Law and Contemporary Problems 203.

¹⁰*Haelan Laboratories Inc. v Topps Chewing Gum Inc* (1953) 202 F 2d 866.

¹¹*K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.

personal autonomy includes the right to control one's identity and its commercial use, thus bringing the right to publicity under the broader umbrella of privacy rights.

It is pertinent to note that the debate over right to privacy in India reached its conclusion only in 2017. Thus, despite efforts from legal scholars such as Justice Kaul, the right to publicity has not had much development with most precedents stemming from High Courts. The right to publicity, while integral to personal autonomy, operates within a framework of restrictions and exceptions. From the decision in *Selvi J. Jayalalitha v. Penguin Books India*,¹² it can be inferred that consent to the use of one's persona or likeness negates any subsequent claims against such use. However, exceeding the limit of this consent shall restore the right to bring action, as has been noted by the Delhi High Court in the case of *Phoolan Devi v. Shekhar Kumar*.¹³ An important facet of obtaining consent for publishing information lies in its availability in the public records. In the famous *Auto Shankar*¹⁴ case it was held that publication without consent is allowed to the extent that it forms part of public records. The Delhi High Court also delivered a seminal verdict expanding the scope of privacy to protect personal intimacies irrespective of celebrity status. It transcends distinctions of fame or public recognition.

While true crime documentaries are increasingly enjoyed as a form of entertainment, they pose a different challenge altogether. True crime documentaries often dramatize horrific events, relying heavily on the names, likenesses, and personal stories of victims without their consent. Further, there exists increasing subjectivity in determining whether one's consent has been exceeded. Right to publicity remains a facet of right to privacy, rendering it to be tested factually on a case-to-case basis,¹⁵ creating legal lacunas in determining the ambit of consent.

¹²*Selvi J. Jayalalitha v Penguin Books India* (2012) SCC OnLine Mad 3263.

¹³*Phoolan Devi v Shekhar Kumar* (1994) SCC OnLine Del 722.

¹⁴*R. Rajagopal v State of T.N* (1994) 6 SCC 632.

¹⁵*Gobind v State of M.P.*, (1975) 2 SCC 148.

Despite being central to these narratives, victims and their families rarely receive any financial compensation, overlooking their right of control over commercialisation of their identity. The nature and content of true crime media often deals with the right to publicity of a deceased victim. The most recent legislation on posthumous publicity rights was introduced in New York.¹⁶ The law recognized usage of a deceased personality's name, voice, signature, photograph, or likeness on products, merchandise, advertising, or soliciting purchases of products without prior consent from person/s to whom personality rights are transferred, to be liable for damages. Further, in *Martin Luther King v. American Heritage Products Inc.*,¹⁷ it was held that publicity rights survive the death of its owner and are inheritable and devisable.

Unlike the U.S., India suffers from a legal gap in addressing posthumous publicity rights. In the absence of a single conclusive statute, two principles emerge. First, posthumous publicity rights cannot be claimed when the work in question is based on public records and information.¹⁸ Second, the rights of celebrities, safeguarded as intellectual property, can be transferred and licensed under specific laws and may endure beyond the public personality's death. In the absence of a *sui generis* framework for posthumous publicity rights in India, there is an increased risk of exploitation, particularly for victims of true crime documentaries. These portrayals contain sensitive and deeply personal aspects of victims' lives without adequate legal safeguards. This presents the urgent need for a universally recognized right to publicity, ensuring that victims and their families retain control over the narrative of their depiction in such portrayals.

¹⁶New York Civil Rights Law, s 50.

¹⁷*Martin Luther King v American Heritage Products Inc* (11th Cir 1983) 694 F2d 674, 682.

¹⁸*Makkal Tholai Thodarpu Kuzhumam Ltd. v V. Muthulakshmi* (2007) SCC OnLine Mad 850.

The presence of facts and information about true crime cases in public records significantly narrows the scope for victims to claim compensation or exercise control over their portrayal. Nevertheless, this is not an entirely perfect defence. In the case of *Zacchini v. Scripps-Howard Broadcasting Co.*,¹⁹ the U.S. Supreme Court recognized that by recording an entire performance of an artist the reporter had infringed his right to commercialise his identity or likeness. Nonetheless, this holding of right to publicity against freedom of speech and expression is narrow and does not necessarily fit the true crime genre. In true crime media, there exists no “performance” to be recorded, instead it is the persona and likeness of a person that is being “recorded” and exploited presenting yet another legal inadequacy.

B. The Shaping of Public Opinion and Judicial Proceedings

True crime documentaries often exploit publicly available narratives without compensating the victims or their families, reducing their identities to mere story elements in pursuit of entertainment and profit. True crime has the power to create its own reality. Within the ecosystem of serial narrative production, crime and violence are perpetually recycled and reinterpreted, with high-profile cases being retold to meet the demands of content creators and highly engaged audiences. This self-sustaining “knowledge space” often intersects with the criminal justice system, as true crime enthusiasts take an active role in analysing cases and proposing solutions. The remarkable success of productions like *Serial*, which fuelled public belief in Adnan Syed’s innocence, illustrates this phenomenon. Despite widespread acceptance of Syed’s innocence within the true crime community, his appeals have been repeatedly denied, and he remains incarcerated.²⁰ This dynamic creates a troubling rift, as public trust in the criminal

¹⁹*Zacchini v Scripps-Howard Broadcasting Co.*, (1977) SCC OnLine US SC 153.

²⁰Anhiti Patnaik & Elana Gornel(eds), *Serial Killers and Serial Spectators: Cultures, Narratives, and Representations* (Brill Academic Pub 2024) 14.

justice system erodes as it is increasingly perceived as deficient compared to the narrative satisfaction offered by true crime. The pressure to craft compelling stories often leads to narratives that prioritise entertainment over veracity.

This commodification not only denies victims agency in retelling of their own stories, but also poses significant risk of prejudicial publication affecting an ongoing trial. The systematic implications of such media were exemplified by the podcast *The Teacher's Pet*, which uncovered new evidence that prompted Australian police to arrest and charge a man with murder. However, the defence argued that the podcast had prejudiced potential jurors, undermining the possibility of a fair trial. This led to the Australian government restricting access to the podcast, resulting in significant delays during which crucial witnesses passed away.²¹

The integrity of the judicial system hinges on impartiality of judges, but it is well-documented that media trials risk influencing them subconsciously.²² A prominent example of this is the discourse surrounding the aftermath of *KM Nanavati v. State of Maharashtra*.²³ The media portrayed Nanavati as a hero defending his family and honour, while casting Ahuja, the deceased, as a villain who betrayed his friend. Through biased reporting, as well as the sensationalisation and commercialisation of the crime, the media heavily influenced the jury's decision, which contributed to the end of the jury system in the country.²⁴

²¹Tiffanie Turnbull, 'Chris Dawson: How The Teacher's Pet Podcast Helped Catch and Jail a Killer' (*BBC News Sydney*, 31 August 2022) <<https://www.bbc.com/news/world-australia-62735339>> accessed 18 December 2024.

²²Law Commission of India, *Trial by Media: Free Speech and Fair Trial Under Criminal Procedure Code, 1973* (Law Com No 200, 2006) 46.

²³*K.M Nanavati v State of Maharashtra* (1962) AIR 605.

²⁴James Jaffe 'After Nanavati' (2017) 52(34) (*EPW Engage*, 26 August 2017) <<https://www.epw.in/engage/article/after-nanavati>> accessed 15 December 2024.

In *Shalab Kumar Gupta and Ors. v. B.K. Sen and Anr.*,²⁵ the Supreme Court has held that when a trial by one of the courts of the country is ongoing, a trial by media must be prevented in order to avoid any prejudice towards the accused or the prosecution. The Bombay High Court, in rejecting CBI's plea regarding Netflix's docuseries on the prime suspect in the ongoing Sheena Bora murder case,²⁶ overlooked the growing influence of true crime media in shaping perception. *Per contra*, in the Sushant Singh Rajput case,²⁷ the Bombay High Court highlighted the influence of media trials. Despite the fact that the investigation was ongoing, media narratives had already labelled individuals involved, violating the privacy of both the victim and the accused. The High Court issued a series of guidelines to regulate news media's reporting of such cases in the future. While the scope and ambit of the guidelines issued in this particular instance remain relevant for the facts of the case at hand, the directions are exclusively binding on news media. They do not address challenges posed by other forms of media, including the true crime genre as a whole, thereby limiting their long-term applicability.

C. *The Proceeds from Crime*

In addition to denying victims fair remuneration, true crime media often serves as a commercial incentive for the criminals themselves. Notoriety-for-profit refers to instances where criminals profit from their criminal activities, often through book deals, podcasts, interviews, documentaries and movies.²⁸ This has been identified as a significant problem in the United States, leading to the enactment of legislations across multiple states. These laws aim to prevent such contracts and

²⁵*Shalab Kumar Gupta and Ors. v. B.K. Sen and Anr.* (1961) SCR (3) 460.

²⁶*CBI v Netflix Entertainment Services*, WP (Cr) 571/2024 Bom HC (05.03.2024).

²⁷*Nilesh Navlakha v Union of India*, WP (PIL) 92252/2020 Bom HC (18.01.2021).

²⁸Justin Burnworth, 'Making A Constitutional "Son of Sam" Law: Netflix's Booming True Crime Business', (2022) 49 *Hastings Const. L.Q.* 3, 4.

arrangements by seizing the financial remuneration received to compensate the victims of the crime in question. These laws are also referred to as Son of Sam (“SoS”) statutes.

Named after David Berkowitz, the infamous “Son of Sam”, these laws aim to redirect such profits toward victim compensation rather than allowing perpetrators to monetise their infamy.²⁹ However, their constitutionality faced scrutiny in the case of *Simon & Schuster*,³⁰ where the United States Supreme Court unanimously invalidated New York’s version of the law. In order to justify the restriction on the First Amendment the state must show a compelling state interest and that the regulation is narrowly tailored to achieving its purpose. In the present case, while the Court acknowledged New York’s compelling interest in depriving criminals of the profits of their crimes, and in using these funds to compensate victims, the law failed the tailoring requirement. Its broad language extended to anyone who admitted to a crime while recounting their life story, regardless of whether they were convicted or even charged. Conclusively, what was lacking was the effective implementation of the state’s object.

The SoS laws of California³¹ and Nevada³² also met with the same fate and were rendered unconstitutional by the Supreme Courts of the respective states. However, India has differing constitutional priorities, and this could offer a fertile ground to balance ethical considerations with the freedom of speech and expression. The American jurisprudential understanding of free speech differs greatly from the Indian position on the same. The latter is less far-reaching and

²⁹ibid 6.

³⁰*Simon & Schuster, Inc. v Members of the N.Y. State Crime Victims Bd.*, (1991) 502 U.S. 105, 112.

³¹*Keenan v Super. Ct. of Los Angeles City.*, 27 Cal.4th 413 (2002).

³²*Seres v Lerner*, 102 P. 3d 91, 97 (Nev. 2004).

permissive than the former,³³ with the threshold of reasonableness making its way in text of Article 19(2) of the Indian Constitution.³⁴

Importantly, SoS laws do not suppress speech; they regulate its commercialisation. Criminals retain the ability to share their narratives, but the profits derived from such expressions are redirected to victims, aligning financial accountability with moral responsibility. This distinction highlights the balance these laws strive to achieve between free expression and the equitable treatment of victims. In *Delhi Domestic Working Women's Forum v. Union of India*,³⁵ the Supreme Court highlighted the importance of a victim rehabilitation and compensation framework, and an SoS could serve as a step in furtherance of the same.

Additionally, the framework of these laws intersects with the victim's right to publicity, recognising their right to control the narrative that emerges from the trauma they endured. By prioritizing victim compensation over perpetrator gain, these laws elevate the dignity and rights of those harmed while protecting public interest. However, the potential for overreach remains a concern. Without clear limitations, these laws could extend their reach to unintended scenarios. For instance, they could result in the redistribution of profits of a famous historical figure, who recalled stealing a trivial item in their youth in their autobiography.

Thus, true crime documentaries present a nuanced challenge in balancing freedom of expression with the need to protect victims' rights. While the genre has evolved as a popular form of entertainment, its reliance on the dramatization of real-life tragedies raises ethical and

³³Bruce Michael Boyd, 'Film Censorship in India: A "Reasonable Restriction" On Freedom of Speech and Expression' (1972) 14(4) *Journal of Indian Institute*, 501, 525.

³⁴The Constitution of India, 1950 art 19(2).

³⁵*Delhi Domestic Working Women's Forum v Union of India* (1995) SCC (1) 14.

legal questions that remain inadequately addressed, particularly in India.

III. ACT 3: THE CRISIS

INADEQUACY OF THE EXISTING LEGAL FRAMEWORK

A. The Cinematograph Act, 1952 and Ensuing Challenges

The Cinematograph Act of 1952³⁶ (“**The 1952 Act**”) serves as the governing framework for documentaries that are screened in India as they fall within the definition of “film” delineated under Sec. 2(dd) of the statute.³⁷ The 1952 Act serves as the cornerstone of film regulation in India, containing provisions for regulation of the film-making and broadcasting process, by issuing certificates on the basis of content. Section 3 establishes the Central Board of Film Certification (“**CBFC**” or “**Board**”), which plays a pivotal role in scrutinising films in order to ensure alignment with societal morality and decency.³⁸ Such certification is an essential compliance pre-requisite for the screening of documentaries. True-crime documentaries are carefully examined from multiple standpoints, and instances of the CBFC denying clearance are not uncommon.

However, the CBFC suffers from several ailments with respect to its censorship mechanisms, therefore rendering it unsuitable to counter the unique challenges presented by true crime documentaries in India. The Board is infamous³⁹ for overstating its role as the “bastion of morality” and ruthlessly exercising its power of “pre-censorship” through excisions and modifications under Sec. 4(1)(ii) of the 1952 Act.⁴⁰ It is

³⁶The Cinematograph Act, 1952 (37 of 1952).

³⁷The Cinematograph Act, 1952 (37 of 1952) s 2(dd).

³⁸The Cinematograph Act, 1952 (37 of 1952) s 3.

³⁹Arpan Banerjee, ‘Political Censorship and Indian Cinematograph Laws: A Functionalist-Liberal Analysis’, (2010) 2 Drexel L. Rev. 557, 559.

⁴⁰The Cinematograph Act, 1952 (37 of 1952) s 4(1)(ii).

noteworthy that a writ petition seeking the declaration of multiple provisions of the statute as unconstitutional has been listed for hearing before the Supreme Court in January 2025.⁴¹ The petition outlines the varied spectrum of flaws in the CBFC's powers and functions.

Firstly, the 1952 Act does not prescribe any qualifications for membership of the Board, and grants unbridled powers to the Central Government to make appointments in this regard. Politically motivated and partisan appointments are plausible and common, threatening the bedrock and edifice of a democratic structure in the context of the extensive powers of censorship. Currently, at least three board members of the CBFC have political affiliations, exacerbating concerns surrounding the fairness of their decisions.

Secondly, the Board's mandate often results in subjective and arbitrary decisions due to vagueness and imprecision in the rules and guidelines formulated from time to time for this purpose. The lack of standardization has often yielded inconsistent results, such as denying clearance to a Malayalam film on the ground that it "glorified gay relationships",⁴² and deleting a signboard of Punjab from a film titled "*Uda Punjab*".⁴³ Such wide discretion can give way to arbitrariness, which would be counterintuitive to the goal of protecting victims' rights.

The Petitioner also argues that a documentary cannot be construed as a film under Sec 2(dd) of the 1952 Act, and asserts that the provisions of the 1952 Act should be read down so as to exclude documentaries from its ambit. However, this contention does not seem to hold ground, since the primary grievance could be remedied by prescribing separate guidelines for the purpose of scrutinising documentary films. While it

⁴¹W.P. 760/2021, *Amol Palekar v. Union of India*, SC.

⁴²WA 2293/2016 *Jayan Cherian v. Union of India* Ker HC (02.12.2016).

⁴³*Phantom Films Pvt. Ltd. And Anr v Central Board of Certification*, AIR 2017 (NOC) 62 (BOM).

is true that feature films are distinct from documentaries, it is flawed to assert that the latter would not fall within the purview of “cinematographic films”, essentially falling victim to the fallacy of *argumentum ad consequentiam*.

The most significant lacuna with respect to reviewing documentary content lies in the limited scope and applicability of the 1952 Act and consequently, the CBFC's powers. The 1952 Act exclusively governs traditional forms of film and cinema, thereby excluding films released on digital platforms.⁴⁴ The 1952 Act is still inadequate even from the sole lens of traditional true crime documentaries, since the CBFC wrongly places emphasis on the “morality” and “appropriateness” of the content, rather than the need to ensure compliance from the lens of securing approvals of subjects and victims. The exclusion of modern forms of documentaries serves as a major pitfall in the modern media landscape, since over-the-top (‘OTT’) platforms are rapidly gaining ground as consumer preferences shift away from traditional media. In contemporary times, documentaries are *streamed*, rather than *screened*.

B. Deficiencies of the Information Technology Act, 2000

The Broadcasting Services (Regulation) Bill of 2023⁴⁵ (‘The Bill’) defines OTT services as those “available on-demand or live to subscribers or users in India, where a curated catalogue of programmes owned by, licensed to or contracted to be transmitted over the internet or a computer resource, not being a closed network and where additional hardware, software or combination thereof including a set-top-box or dongle and software keys may be required to access content on non-smart televisions or viewing devices”.⁴⁶ Since the Bill has not been passed as of January 2025, the current governing law for OTT

⁴⁴W.P. 6050/2029, *Padmanabh Shankar v Union of India*, Kar HC (07.08.2019).

⁴⁵The Broadcasting Services (Regulation) Bill, 2023.

⁴⁶The Broadcasting Services (Regulation) Bill, 2023, s 2(y).

media is the Information Technology Act, 2000⁴⁷ ('The 2000 Act' or 'The IT Act'), with its provisions outlining a distinct content-review mechanism.

The IT Act primarily governs electronic transactions, cybersecurity and digital content regulations. With respect to reviewing content, Sec. 69A of the statute clearly delineates the Central Government's power to issue directions for blocking public access to information in the interests of the following- the sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States, public order or for preventing the incitement to the commission of any cognizable offence relating to the above.⁴⁸ The Ministry of Information & Technology notified the IT Rules 2021⁴⁹ ('The Rules'), conclusively bringing OTT platforms under its ambit by defining "online curated content" along similar but less precise lines as the Bill. OTT platforms are recognised as "publishers", and their obligations are delineated under Part III of the Rules. In addition to the conditions prescribed under Sec. 69A of the 2000 Act, the platform is also bound to exercise caution and discretion when featuring the activities, beliefs, practices, or views of any racial or religious group.⁵⁰ The publisher is also bound to self-classify the content on the basis of context, theme, tone, impact and target audience.⁵¹

Similar to the 1952 Act, the IT Act is inadequate to counter the tribulations of true crime documentaries in India. *Firstly*, the 2000 Act and Rules have come under fire in the light of several free speech

⁴⁷The Information Technology Act, 2000.

⁴⁸The Information Technology Act 2000, s 69(A).

⁴⁹The Information Technology Rules 2021.

⁵⁰The Information Technology Rules 2021, appendix, II(A)(c).

⁵¹The Information Technology Rules 2021, appendix, II(B)(i).

concerns. The Bombay,⁵² Madras⁵³ and Kerala⁵⁴ High Courts have issued stay orders against the Rules, and a slew of petitions challenging its Constitutionality have been tagged and presented before the Delhi High Court.⁵⁵ The “code of ethics” contains subjective and vague terms such as ‘half-truths’ and ‘decency’,⁵⁶ which could be interpreted widely and yield inconsistent results as a manifestation of arbitrary censorship. *Secondly*, the wide sweep of powers under Sec. 69A⁵⁷ has enabled the Central Government to issue several blocking orders in an indiscriminate form. In *Shreya Singhal v. Union of India*,⁵⁸ the Supreme Court struck down Sec. 66A⁵⁹ after distinguishing between dissent and incitement, holding that only the latter could be a ground to curtail the fundamental right to freedom of speech and expression. In 2023, the emergency powers under Rule 16⁶⁰ had been invoked to ban a political-charged BBC documentary, which has also been challenged in a pending petition before a division bench of the Supreme Court.⁶¹ The broad scope for misuse enables content moderation decisions to be influenced by political biases, thereby stifling free speech without reasonable grounds for the same. Therefore, protecting the rights of victims is likely to be low priority in the absence of a *sui generis* law for the same.

IV. ACT 4: THE RESOLUTION

⁵²*Agij Promotion of Nineteenonea Media Pvt. Ltd. & Ors. v Union of India*, 2024:BHC-AS:4669-DB.

⁵³WP 25565/2021 *Indian Broadcasting & Digital Foundation v Ministry of Electronics and Information Technology & Ors* Mad HC (02.12.2021).

⁵⁴*Live Law Media (P) Ltd. v Union of India*, WP (C) 6272/2021 Mad HC (10.03.2021).

⁵⁵*Foundation for Independent Journalism & Ors. v Union of India & Anr.*, WP (C) 3659/2021 pending before Del HC.

⁵⁶The Information Technology Rules 2021, appendix.

⁵⁷The Information Technology Act 2000, s 69(A).

⁵⁸*Shreya Singhal v Union of India* (2015) 5 SCC 1.

⁵⁹The Information Technology Act 2000, s 66(A).

⁶⁰The Information Technology Act 2000 r 16.

⁶¹*Ram v Union of India*, pending before the Supreme Court, WP (C) 116/2023 N.

EPILOGUE

True crime documentaries have emerged as a cultural phenomenon, captivating audiences with their intricate narratives and dramatic depictions. However, their rise has brought significant legal and ethical dilemmas to the forefront. The commodification of victims' trauma for entertainment showcases the urgent need for reform. As depicted, India's evolving jurisprudence offers a foundation, but it remains fragmented and insufficient in addressing the unique challenges of this genre.

The absence of posthumous publicity rights, coupled with the power of true crime media to shape narratives and construct its own reality, highlights the need for greater scrutiny. As this paper has demonstrated, existing statutes such as the Cinematograph Act, 1952, and the Information Technology Act, 2000, fail to address the nuances of privacy, publicity and compensation in this context. The right to publicity, still in its infancy in India, leaves victims vulnerable to exploitation. Moreover, the lack of a notoriety-for-profit law leaves victims without recourse against the commercialisation of their trauma, exacerbating their exploitation.

The absence of a definitive framework to address these issues has allowed the commodification of trauma to thrive unchecked. However, it is equally vital to ensure that regulatory efforts do not encroach upon freedom of speech and expression. To bridge this gap, several key measures must be implemented.

Firstly, clear and enforceable guidelines must be established to protect victims' publicity rights in true crime media, ensuring that identities are not exploited without consent. Consent itself must be defined in unequivocal terms to eliminate ambiguity, with detailed contracts outlining rights over the story, remuneration and other essential

aspects. Such agreements should involve consultative processes with victims and their families, respecting their perspectives and moral dignity. *Secondly*, India must recognise a posthumous right to publicity to protect the narratives of deceased victims. This would ensure that their identities are not exploited and their stories are treated with respect. *Finally*, a statute akin to the New York Son of Sam law should be introduced, specifically targeting criminals who profit from such narratives. By redirecting these profits towards victim rehabilitation and compensation, the law would balance freedom of speech with the ethical duty to honour victims' dignity and rights.

A *sui generis* law regulating true crime is imperative. Such legislation should reconcile the right to freedom of speech and expression with the rights of victims, providing safeguards for consent, privacy, and fair compensation while ensuring that narratives do not compromise ongoing judicial processes. The legal gaps posed by true crime media demand a comprehensive, victim-centric legal framework. This shift is critical in ensuring that the genre contributes constructively to societal discourse without perpetuating harm or exploitation. A robust legal framework for true crime media is not merely a regulatory necessity but a constitutional imperative to safeguard the dignity, rights and autonomy of victims in the face of commodified narratives.