

India: The ethical and legal violations of the Oscar-nominated 'To Kill a Tiger'

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The Canadian documentary chronicles the fight for justice after a 13-year-old girl was gang-raped in Jharkhand, but its reckless approach violates India's Protection of Children from Sexual Offences Act

Trigger warning: The following text references the sexual assault of a child.

When the Canadian production *To Kill a Tiger* was listed among this year's Oscar nominees for Best Documentary Feature, it aroused considerable curiosity in India. The filmmaker, Nisha Pahuja, is a Canadian of Indian origin, whose work is dominated by India-related themes. The film's real-life story is set in the state of Jharkhand, in eastern India, and follows a father's fight for justice after his 13-year-old daughter was gang-raped in 2017. *To Kill a Tiger* has won awards across the globe since its premiere at the Toronto International Film Festival in September 2022, and it could bag its biggest prize yet at the 2024 Oscars ceremony, to be held on 10 March.

To Kill a Tiger has earned credibility in the West by roping in as executive producers several international celebrities of Indian origin - Dev Patel, Mindy Kaling, Deepa Mehta and, most recently, Priyanka Chopra Jonas. The film has already had a theatrical release in the United States, and has been streaming for free on the website of the National Film Board of Canada. In India, after no release or screenings even for local film critics in the year and a half since the film's premiere, *To Kill a Tiger* was finally scheduled for release on 8 March on Netflix. But, just before that, the release was abruptly pushed to 10 March - the same date as the Oscars. It is perhaps because of this lack of public access to the film in India so far that it has gone largely unnoticed that the film violates the country's child-protection laws.

"Filming the rape survivor when she was a minor and using that footage in a documentary film revealing her face and disclosing other details is a violation of Indian law," Rebecca Mammen John, a Senior Advocate at the Supreme Court of India, told me. "As per Section 23 of The Protection of Children from Sexual Offences (POCSO) Act 2012, there is an absolute prohibition from revealing the identity of a child rape survivor or revealing any information that could lead to a disclosure of the child's identity. Under the proviso to Section 23(2), only a Special Court competent to try the case can grant permission for such disclosure if in its opinion such a disclosure serves the interest of the child. The question that the filmmaker has to answer is this: did she get a Special Court's permission before filming the minor child? If the filmmaker claims that the survivor waived the embargo after she became an adult, then the validity and relevance of that waiver will still depend on whether the legally required process was followed for the filming that was done while she was a minor."

In interviews to the Western press, Pahuja has explained that when the survivor in this case crossed the age of 18, she chose to reveal her identity - her face, not her name - after watching footage of herself being interviewed for the film when she was 13. But the filmmaker has not given any

explanation of what legal diligence she undertook, if any, in the three-and-a-half years that, by her own account to *Documentary* magazine, it took her to shoot *To Kill a Tiger* – during which time the survivor was a minor.

The privacy of a rape survivor, fiercely safeguarded by Indian law, is not a “shroud of shame”, as the *New York Times’s* review of *To Kill a Tiger* puts it. It is a shield offered to survivors of sexual violence in a patriarchal world and deeply patriarchal country where they are routinely stigmatised and often ostracised as a result of the wrong done to them, and even accused of having “asked for it”.

A survivor in India is not denied agency: rape survivors are free to disclose their identity if they wish, and the purpose of the laws – in cases of both child and adult survivors – is to guard against transgressions by unethical mediapersons and other parties involved. In the case of adult survivors, Section 228A of the Indian Penal Code permits “the printing or publication of the name or any matter which may make known the identity of the victim” if this is done with the survivor’s written authorisation.

POCSO, which covers children, is even more stringent than the Penal Code in this regard. The goal of this strictness is to avoid the exploitation of survivors not only by the media but also by their next of kin, who – for profit or any other reason, as detailed by the Supreme Court in *Nipun Saxena vs Union of India* – may not necessarily act in survivors’ interests. This is why POCSO permits a child survivor’s identity to be revealed only with the written consent of a Special Court – not a parent, not a relative, not a guardian, not a social worker, not an activist, not an NGO, but *only* a Special Court.

The argument that the survivor in *To Kill a Tiger* granted permission for her identity to be revealed on becoming an adult also leaves the question of how Pahuja obtained consent to interview her as a child in the first place.

The award-winning poet and filmmaker Leena Manimekalai, currently based in Canada, watched the documentary this January and criticised it sharply on social media afterwards. Among other things, she red-flagged a passage featuring the child survivor “rehearsing her witness statement” before she testified during the trial in her case at a lower court in Ranchi, Jharkhand’s state capital.

This must be viewed in the context of off-screen happenings. In 2018, the Ranchi court convicted all the three men accused of the rape, sentencing them to 25 years each of rigorous imprisonment, along with fines. The matter is now being appealed in the Jharkhand High Court. “Since I have not watched the film, I cannot comment on the nuances of the scene described, but when a matter is under appeal, showing a survivor on camera rehearsing her testimony could be potentially damaging to her case in court,” Mammen John said.

In her social media post, Manimekalai also pointed out that the survivor’s actual name comes up in the film. This is not only a violation of POCSO, it goes against the filmmaker’s publicly stated agreement with the survivor that her name would be changed in the film, in accordance with which she was given the pseudonym Kiran.

In the time I have been in touch with Pahuja about *To Kill a Tiger*, since the start of February, she initially agreed to an interview but then changed her mind. I also repeatedly asked for access to the film, but was not granted it. After I sent written questions about the process followed to obtain consent and clearance to interview and film the child survivor while she was a minor, Pahuja replied saying only that she was busy until at least 10 March, and suggesting that we should speak afterwards.

The social activist Mahendra Kumar, who was closely associated with the making of *To Kill a Tiger*, was more forthcoming. When the gang-rape in question occurred, Pahuja was already tracking a awareness-building programme that Kumar was handling in Jharkhand, working with men on issues of gender equality and sexual violence. According to Kumar, the survivor's father was involved with this programme, and this is what led the filmmaker to the family.

When I interviewed him over the phone, Kumar turned out to be misinformed about POCSO. He explained that while consent was taken from the survivor herself when she turned 18, before that, since she was a minor in the years Pahuja was shooting the film, her parents' consent was repeatedly taken – “orally, in writing and on camera” – to film them and their daughter. He incorrectly stated that a minor rape survivor's parents' consent is what is needed under POCSO. When asked if Pahuja had sought permission from a Special Court, as required under POCSO, he said he had no knowledge about this and would have to check with her.

Pahuja, for her part, has avoided any reference in her interviews in the West to such complexities of India's child-protection and survivor-protection laws as they relate to her project. While speaking to the *Hollywood Reporter* in December 2023, for instance, she positioned the question of whether or not to show the survivor's face as an ethical dilemma for her personally, rather than a question of Indian law.

She has also tended to speak of Indian society as a monolith, without any mention of the particular vulnerability of this survivor as a member of one of the country's indigenous tribes, known in popular parlance as Adivasis and in the Constitution of India as Scheduled Tribes. Manimekalai, in her social media post, said the film “is a classic example of a settler colonist gaze on an indigenous child survivor of gang rape in a developing country.”

Such apparent dumbing-down of the story for a Western audience is also evident in the decision to pitch *To Kill a Tiger* as the saga of a man fighting the odds to get justice for his daughter, and to downplay the survivor's mother's courage and support for her daughter – an ironic choice in a film about the rights of women and girls. Pahuja's own remarks in the media testify to the mother and daughter's resilience, as do Mahendra Kumar's words. The survivor's mother “had a major role in boosting her daughter's morale, giving courage to the child and even the husband,” he said. Kumar described the mother as, “in a sense, probably the leader of her family.” As for the survivor, he said, “The girl is very brave. She was brave earlier too. And she did not feel ashamed – not then, not today either.”

The filmmaker's call to nevertheless frame the documentary as a father's campaign for justice – not the parents' and survivor's campaign – seems to have been a pragmatic one based on what would most readily attract eyeballs and feed confirmation bias in the West, and possibly also among privileged classes in urban India.

The hook here is that men such as the survivor's father are non-existent in India – “a man and a father standing up for his daughter, something that doesn't happen in India at all!”, Pahuja told *Documentary* magazine – while female support for survivors is presumably the norm. But in families across the world, and certainly in conservative Indian families, a survivor of abuse is at least as likely to be doubted as to be believed, to be silenced as to be supported, as much by a mother as by a father.

Pahuja's sweeping comment to *Documentary* is easily contradicted by reports on several high-profile rape cases in which Indian fathers have fought for their daughters. The most prominent example is the victim's father in the infamous December 2012 Delhi gang-rape. He and his wife stood unflinchingly by their daughter till her death, and have remained vocal advocates for justice in cases

of sexual violence in the years since.

In light of all of this, it is natural to wonder if the film's release on Netflix India has been strategically timed to come after voting has closed for this year's Oscars, so that the conversation around it in India will have no influence on its chances at the awards. But the film's award prospects are a secondary issue here. What is of paramount importance is the survivor's welfare. Now that India finally gets to see *To Kill a Tiger*, the film will no doubt contribute to the ongoing national discourse on rape and sexual violence. But it should also spur a parallel discussion on the relationship of trust built by the filmmaker with an impoverished family from an indigenous community in one of India's poorest states, following which she disregarded the country's child-protection laws in a film that has empathy for the child survivor on the face of it but, in less discernible ways, puts her at risk.

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