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DIGITAL INHERITANCE IN INDIA: LEGAL GAPS AND FUTURE SOLUTIONS- Karan Kaushal¹**Abstract –**

The rapid growth of digital technology has transformed the nature of personal and economic assets, giving rise to a new category of property “digital assets”. These include email accounts, social media accounts, cloud storage, NFTs, cryptocurrency, and various online subscriptions that hold both sentimental and financial value. Indian succession law does not recognise digital assets as inheritable property. Existing statutes, including the Indian Succession Act, 1925, the Hindu Succession Act, 1956, the Information Technology Act, 2000, and the Digital Data Protection Act, 2023, offer no clear procedure for the inheritance, access, transfer, or management of such assets. This legal vacuum creates uncertainty for heirs, potential criminal liability for accessing accounts, and complete dependence on platform-specific terms of service.

This paper analyses the statutory gaps in India and examines comparative international models such as RUFADAA and GDPR-based digital asset inheritance and privacy rights after the death of a person. It concludes with suggestions and highlights India’s urgent requirement for a dedicated framework for digital assets to enable digital wills and provide lawful access mechanisms for heirs to ensure continuity of a person’s digital legacy.

Keywords – Digital assets, Digital inheritance, digital wills, Succession law, DPDP Act, India, comparative analysis.

Introduction –

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In today's digital era, every individual is connected to some form of online platform and continuously accumulates data in various forms. A world driven by digital interaction has led to the emergence and growth of digital or virtual estates—such as cryptocurrency wallets, NFTs, email archives, cloud storage accounts, social-media profiles, and various other virtual assets that have become an extension of a person's identity. These digital assets hold significant value in a person's life, often carrying sentimental, financial, personal, or evidentiary importance.

The question of digital legacy arises when an individual dies leaving behind these digital assets. After a person's death, people generally focus on physical property such as land, jewellery, and other tangible assets, while overlooking invisible digital assets including social-media accounts, subscriptions, cryptocurrency wallets, and similar online holdings.

The Indian legal system traditionally focuses on tangible and intangible property under the *Indian Succession Act, 1925*², but the statute does not recognise digital assets as inheritable property. Neither the *Hindu Succession Act, 1956*³ nor any other legislation specifically provides for the inheritance or management of digital assets. These unanswered questions highlight an urgent need for legislative clarity.

Many jurisdictions, such as the United States and the European Union, have already taken steps to recognise digital inheritance. The U.S. has adopted the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)⁴, while the EU ensures strong rights over personal digital data through the GDPR⁵. Even technology companies have introduced features like Google's *Inactive Account Manager*⁶ and Apple's *Digital Legacy* tool⁷, which allow users to designate trusted contacts who may access certain data after death. However, India currently lacks any statutory mechanism to address similar issues.

²The Indian Succession Act, No. 39 of 1925 (India)

³ The Hindu Succession act, No. 30 of 1956 (india)

⁴ Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) (2015) (U.S.); see also [2015_RUFADAA_Final_Act_2016mar8.pdf](#)

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council (general Data Protection Regulation); see also [Legal framework of EU data protection - European Commission](#)

⁶ Google Support, About Inactive Account manager, <https://support.google.com/accounts/answers/3036546>

⁷ Apple Support, How to Request Access to a Deceased Family Member's Account, [How to request access to a deceased family member's Apple Account - Apple Support](#)

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The increasing digitalisation of everyday life, combined with the absence of a legal framework, poses risks to succession, privacy, estate management, and even criminal investigations. This paper examines the current legal landscape in India, identifies the regulatory gaps, analyses international approaches, and proposes reforms for recognising and regulating digital wills as well as post-mortem control over online assets. The objective is to highlight the urgent need for a dedicated digital-inheritance law in India.

Analysis of Indian statutory limitations –

Currently, the Indian legal framework lacks specific rules, regulations, procedures, or special laws for the purpose of inheritance, transfer, or management of digital assets after the death of a person. Existing statutes or laws deal only with property, data protection, and electronic communication, but none explicitly provide procedures for the transfer or inheritance rights of heirs of a deceased person over digital assets. The following are the challenges faced:

1. Lack of Recognition of Digital Assets as “Property”

- The cornerstone of Indian inheritance law is the Indian Succession Act, 1925, and the Hindu Succession Act, 1956. These two Acts govern the succession and distribution of a deceased person’s movable and immovable property; however, none of them explicitly mentions the digital assets of that deceased person⁸.
- Section 2(h) of the ISA defines a ‘will’ in terms of property, while Section 5 limits applicability to movable and immovable property, without defining digital assets⁹.
- Without statutory recognition, heirs have no legal claims to such assets, leaving executors unable to include them in the estate.

2. Risk of Criminal Liability under the IT Act, 2000

- Sections 43 and 66 of the Information Technology Act, 2000 penalize unauthorized access to computer systems and electronic accounts.¹⁰

⁸The Indian succession Act, supra note 2; The Hindu succession act, supra note 3.

⁹Indian Succession Act, 1925, §§ 2(h), 5

¹⁰Information Technology Act, 2000, No. 21, Acts of Parliament, 2000, §§ 43, 66.

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- In the absence of exceptions for heirs or executors to access a deceased person's account for legitimate purposes, there is a risk of potential criminal or civil penalties.
- Even electronic wills are excluded from the current legal purview, as Section 1(4) of the IT Act excludes them¹¹. This absence prevents digital testamentary documents from being used to bequeath digital assets.
- This statutory ambiguity discourages lawful access and estate administration.

3. Inadequacy of the DPDP Act, 2023

- The Digital Personal Data Protection Act, 2023 (DPDP) introduces modern data-protection principles and allows individuals to nominate a person to act on their behalf after death under Section 14 of the Act.¹²
- However, the Act does not clearly define the nominee's powers in relation to legal heirs under succession laws.
- Further, Section 13 of the DPDP Act, 2023 provides the nomination procedure.¹³
- Limitations – It applies only to personal data and not to intellectual property or crypto-like content.

4. Platform Terms of Service Override Legal Rights

- Social media, cloud services, cryptocurrency platforms, and other digital platforms generally treat accounts as licenses rather than property.¹⁴
- Terms of service often prohibit the transfer or management of a person's digital assets and restrict heirs' access to the deceased person's accounts.¹⁵
- Since Indian statutes do not regulate this, platform rules override and dictate the fate of digital assets.¹⁶

5. Lack of Statutory Mechanism for Digital Wills or Testamentary Transfer

¹¹Information Technology Act, 2000, § 1(4)

¹²Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023, § 14

¹³Digital Personal Data Protection Act, 2023, § 13.

¹⁴See, e.g., Meta Platforms, Inc., *Terms of Service*; Google LLC, *Terms of Service*; Apple Inc., *Apple ID & Privacy Policy* (all treating accounts as limited, non-transferable licenses).

¹⁵*Id.*

¹⁶See absence of regulation in Indian Succession Act, Information Technology Act, and related statutes.

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- Even if a deceased person's will specifically mentions the inheritance of digital assets, there are still no statutory procedures to enforce such bequests.¹⁷
- Executors or heirs may face practical difficulties in accessing platforms or accounts, leading to the loss of digital assets.

6. Tax Recognition Doesn't Ensure Legal Succession

- The Income Tax Act, 1961 recognizes Virtual Digital Assets (VDAs) for taxation under Section 2(47A) of the Act.¹⁸
- However, this recognition does not confer inheritance rights, leaving heirs unable to claim wallets, tokens, or NFTs in the absence of a statutory mechanism.¹⁹

Case exploration –

India does not yet have direct case laws specifically addressing the inheritance of digital assets after a person's death. However, several significant Indian judgments indirectly shape the legal framework concerning digital privacy, data control, and electronic evidence.

- Justice K.S. Puttaswamy v. Union of India (2017) – Right to control personal data²⁰

This landmark judgment recognised the right to privacy as a fundamental right. The Supreme Court also noted that privacy does not extend beyond death, which implies that heirs cannot inherit a deceased person's privacy rights. This creates a conflict when digital accounts or online data need to be accessed after death.

- Anvar P.V. v. P.K. Basheer (2014)²¹

In this case, the Court held that electronic evidence is admissible only when it meets the requirements under Section 65B of the Indian Evidence Act, 1872. This confirms that digital data

¹⁷See Indian Succession Act, 1925; Information Technology Act, 2000 (no recognition of digital wills).

¹⁸Income Tax Act, 1961, § 2(47A).

¹⁹Id.

²⁰*Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

²¹*Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 (India).

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holds evidentiary value, and therefore heirs or executors of the deceased require lawful means to obtain authenticated electronic records.

- Krishna Kishore Singh v. Sarla A. Saraogi (2021)²²

The Delhi High Court stated that personality and publicity rights do not transfer after death, further highlighting the absence of inheritable digital identity rights.

International Approaches to Digital Inheritance: comparative analysis

India currently lacks a clear mechanism or legal framework to manage and transfer the digital assets of a deceased person. To develop effective legal principles for digital asset inheritance, it is important to understand the functional approaches adopted in other jurisdictions. This comparative analysis refers to practices in the United States (RUFADAA), the European Union (GDPR), Germany (the BGH Facebook case), France (the Digital Republic Act). Gaining insights from these jurisdictions can help in shaping a practical and workable plan for India.

1. United States – Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)

- Adopted in more than 40 U.S. states, RUFADAA²³ gives court-appointed fiduciaries (executors or trustees) the power to access a deceased person's digital assets if the individual has consented through a will, an online tool, or a platform feature.
- Fiduciaries receive clear legal authority regarding the data they can access and the type of digital content involved.²⁴
- Companies are required to comply, even if their terms and conditions or terms of service state otherwise.²⁵
- Why this matters for India: RUFADAA protects heirs' rights without violating the user's privacy, and its tiered-consent system is flexible and suitable for India's pluralistic structure.

2. European Union – General Data Protection Regulation (GDPR)

²²Krishna Kishore Singh v. Sarla A. Saraogi, 2021 SCC OnLine Del 3178(India)

²³See RUFADAA, supra note 4

²⁴Id. §§ 9-15 (outlining fiduciary powers for executors, trustees, conservators, and agents under a power of attorney).

²⁵Id. § 5(b) (requiring custodians to comply with fiduciary requests subject to statutory conditions).

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- The GDPR strengthens individual data protection rights, giving every person the right to privacy, control over their data, the ability to delete information when not required, and even the right to decide what should happen to their personal data after death.²⁶
- India currently lacks a similar statute that grants heirs such rights, which would simplify post-death digital asset management when the owner has already assigned the fate of their data through a will or other instructions.

3. Germany – Facebook Legacy Case (BGH, 2018)

- Germany's Federal Court of Justice (Bundesgerichtshof, BGH), in Case III ZR 183/17 (2018), held that a deceased user's Facebook contract transfers to heirs through universal succession under § 1922(1) of the Bürgerliches Gesetzbuch (BGB).²⁷
- The judgment clearly recognises a deceased person's Facebook account as inheritable property.²⁸
- It also states that platform terms of service and jurisdiction clauses that conflict with succession law are unenforceable under § 307 BGB.²⁹
- In India, digital accounts are mostly treated as "licenses" rather than property, whereas Germany treats digital contracts as inheritable. Indian courts should similarly classify digital accounts as property to enable inheritance rights.

4. France – Digital Republic Act (2019)

- The French Digital Republic Act (Loi pour une République numérique, 2016) introduced statutory rights allowing individuals to issue detailed posthumous instructions regarding their digital data.³⁰
- Article 63³¹ grants users the right to decide:
 - whether their personal data should be deleted, preserved, or transferred;

²⁶GDPR, supra note 5; see also European Commission, *Legal Framework of EU Data Protection*, EUR. COMM'N, https://commission.europa.eu/law/law-topic/data-protection/legal-framework-eu-data-protection_en.

²⁷Bundesgerichtshof [BGH] [Federal Court of Justice], III ZR 183/17, July 12, 2018 (Ger.).

²⁸Id. (holding that digital contracts, including Facebook accounts, pass to heirs under *Gesamtrechtsnachfolge*).

²⁹Bürgerliches Gesetzbuch [BGB] [Civil Code], §§ 1922(1), 307, translation available at https://www.gesetze-im-internet.de/englisch_bgb

³⁰Loi 2016-1321 du 7 octobre 2016 pour une République numérique [Law for a Digital Republic], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Oct. 7, 2016.

³¹Id. art. 63.

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- and to appoint a designated executor (fiduciary) to enforce these instructions.
- Platforms must inform users about these rights, and any terms of service restricting them are considered null and void.
- This creates a statutory pathway for legal heirs, who can follow either the owner's instructions or the legal framework when dealing with digital inheritance, providing formal recognition of the user's wishes.

Lessons for India:

The above comparative analysis of multiple jurisdictions clearly highlights the legal necessity of digital inheritance. As individuals increasingly store personal, financial, and evidentiary information online, India cannot continue to rely on outdated succession and inheritance laws that recognise only tangible and traditional forms of property.

1. Absence of statutory recognition of digital assets in Indian laws

- The most significant takeaway is the need for explicit statutory recognition of digital assets as inheritable property. Neither the Indian Succession Act, 1925, nor the Hindu Succession Act, 1956, includes digital assets within their definition of property³². In contrast, the German Federal Court of Justice (BGH) recognised social-media accounts as inheritable, enabling family members or heirs to lawfully access the data.³³ India must similarly define digital assets to include:
 - Email and cloud-storage accounts
 - Social media profiles
 - Subscription based digital accounts
 - Domain names and websites
 - Virtual digital assets such as cryptocurrency and NFTs

Such an inclusive statutory definition is essential to provide a clear structure and enable legal heirs or authorised persons to access or inherit the deceased's digital assets without unnecessary obstacles.

³²The Indian succession Act, supra note 2; The Hindu succession act, supra note 3.

³³ BGH, III ZR 183/17 (Ger. 2018)

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2. Need for a dedicated digital-inheritance statute

- The United States' Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) demonstrates the effectiveness of a specialised and comprehensive statute governing fiduciary access to digital assets.³⁴
 - India requires a similar law that:
 - Defines the rights of heirs, executors, and nominees
 - Empowers fiduciaries to lawfully access, manage, or delete digital assets
 - Establishes procedures for platforms to provide access
 - Prevents arbitrary refusal by service providers

Without a dedicated statute, executors in India are left without guidance, and platforms rely solely on contractual “terms of service,” which often prohibit transfer of access.

3. Creation of a digital-nomination mechanism

- Individuals should be allowed to appoint a “digital-asset nominee or executor” through wills, digital consent forms, or platform-based tools.
- Platforms must be required to recognise such appointments irrespective of their terms of service, unless overridden by a testamentary document.
- The French Digital Republic Act ³⁵demonstrates the benefits of a nomination-based system.

4. Balancing heir rights with post-mortem privacy

- The *Puttaswamy* judgment³⁶ recognised informational privacy as a constitutional right. Many jurisdictions, particularly the European Union under the GDPR³⁷, emphasise the protection of privacy even after death.
- Therefore, India must:

³⁴RUFADAA, supra note 4

³⁵Loi République Numérique, supra note 30.

³⁶Puttaswamy, supra note 20.

³⁷GDPR, supra note 5.

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- Protect the deceased's sensitive data from misuse
 - Permit access only to authorised heirs or executors
 - Categorise digital assets as “sensitive” or “non-sensitive”
 - Allow partial or restricted access where appropriate
- A law that grants heirs unrestricted access would violate the privacy interests of the deceased and third parties, so access must be limited to lawful purposes.³⁸

5. Mandatory compliance by digital platforms

- India must enact provisions requiring platforms to:
 - Provide lawful access within a fixed timeframe
 - Preserve data to prevent loss
 - Allow download or archival of digital assets
 - Disclose limited information to executors for estate administration
 - Mandatory compliance will ensure uniformity and prevent arbitrary denial of access.

Conclusion-

As the world and technology continue to develop rapidly, the digital and virtual space has begun to significantly influence people's lives. These digital activities now carry their own asset and estate value, making it necessary for the Indian legal framework to introduce new or special laws. There is an urgent requirement for proper procedures and legal provisions relating to the transfer, management, and inheritance of a deceased person's digital assets, while also protecting the privacy rights of the individual and any third parties, and moving beyond the limits of traditional succession law.

The analysis in this paper demonstrates that although individuals accumulate substantial digital wealth ranging from emails, cloud data, and social media accounts to cryptocurrency, NFTs, and subscription-based digital platforms Indian succession law does not recognise these assets within

³⁸ J. C. Buitelaar, *Post-mortem Privacy and Informational Self-Determination*, 19 Ethics & Info. Technol. 129 (2017).

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the existing statutory structure. The Indian Succession Act, 1925, and the Hindu Succession Act, 1956, continue to govern inheritance through a property-centric approach, leaving digital estates unaddressed.

The Digital Personal Data Protection Act, 2023, attempts to introduce post-mortem data nomination but falls short of establishing inheritance rights. Additionally, platform-specific Terms of Service often override Indian succession laws, preventing families from lawfully retrieving essential digital information. A comparative study of global models such as RUFADAA, the GDPR, and others illustrates that effective digital-inheritance governance requires statutory recognition, clear access protocols, and defined succession rights.

Therefore, there is an urgent need for India to develop a dedicated legal framework that clearly defines digital assets, recognises digital wills, establishes lawful access mechanisms, and ensures uniform compliance.

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3. ¹GDPR, supra note 5; see also European Commission, *Legal Framework of EU Data Protection*, EUR. COMM'N, https://commission.europa.eu/law/law-topic/data-protection/legal-framework-eu-data-protection_en.
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- **Website/ online source-**

1. See, e.g., Meta Platforms, Inc., *Terms of Service*; Google LLC, *Terms of Service*; Apple Inc., *Apple ID & Privacy Policy* (all treating accounts as limited, non-transferable licenses).
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