



# DIGITAL INHERITANCE: BRIDGING INDIA'S LEGAL GAP IN DATA AND ASSET SUCCESSION

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## ABSTRACT :

The rapid increase in the use of technology has resulted into the growth of digital era. The people using digital resources have also increased significantly. Hence, reforms in the laws regarding the inheritance of digital property and data are needed. The digital age has altered the concept of individual's personal property drastically as now individuals hold various digital possessions like: crypto currency, NFTs, social media accounts, cloud storage, email accounts, etc. India's succession framework is mainly based on Hindu Succession Act 1956 and the Indian Succession Act 1925 which only focuses on the succession of tangible and financial assets. This leaves the successors, heirs and fiduciaries without a clear legal way to access or transfer the digital assets after death and that forces them into the vague areas of the privacy laws and contractual restrictions are also imposed upon them by the service providers. This paper evaluates the legal vacuity surrounding the digital inheritance in India, scrutinizing how the other jurisdictions like the U.S. through its Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) and budding EU regulations, have begun to address this issue. By the use of doctrinal and comparative analysis, this research paper identifies types of digital assets, explores inheritance challenges, and proposes ideas for digital succession and inheritance for India. It urges for prompt statutory reform to guarantee that the digital property and personal data are impeccably incorporated into India's inheritance system, safeguarding both successor's rights and privacy benefits.

**KEYWORDS:** Digital inheritance, Indian succession law, Digital assets, Data privacy, Legal reform, Digital property rights

## INTRODUCTION AND BACKGROUND

Digital interaction in today's world is increasing rapidly and people accumulate their data digitally in various formats and ways. In a world increasingly driven by digital interaction, a variety of **digital estates** have emerged like, crypto currency wallets, NFTs, email archives, cloud storage, and social media profiles. According to the latest figures, India now boasts over 1.2 billion internet users, many of whom maintain numerous online accounts that hold emotional, financial, or intellectual value. A digital legacy is the digital information available about someone following their death.

Digital inheritance is the passing down of digital assets to designated (or undesignated) beneficiaries after a person's death as part of the estate of the deceased. The process includes understanding what digital assets exist and navigating the rights for heirs to access and use those digital assets after a person has died.

When we think of inheritance in India, our minds jump to ancestral land, bank accounts, jewelry, maybe even the old car. But in today's hyper-digital world, there is an invisible asset most of us overlook that is our digital legacy. Photos stored in the cloud, WhatsApp messages, Instagram accounts, Google Drives, YouTube monetized channels, crypto wallets, online subscriptions, blogs including digital art, and these are all extensions of who we are.

In theory, our online accounts die with us, but in reality, that isn't the case. Most platforms do not take into account Indian inheritance laws. Technically, if someone knows our Instagram password, they could secretly log in, download pictures, or even delete the account. Still, there is a grey area between practicality, ethics, and the law. Indian law does not recognize digital heirs or executors, so even close relatives with access may violate platform policies, user privacy, or the IT Act. Sections 43 and 66 of the IT Act classify using someone else's credentials posthumously as illegal.

India's succession laws are primarily governed by religious personal laws. Neither the Hindu Succession Act, 1956, dealing with the inheritance of both movable and immovable property, nor the Indian Succession Act, 1925, regulating the distribution of intestate property and testamentary succession, recognizes digital assets like emails or e-wallets.

"Movable property" under s.2 (e) only refers to tangible items. Most wills also do not mention digital legacies at all. Muslim succession under Shariat also lacks clarity on digital assets without any statutory or formal will-based bequest (wasiyat).

Two principal issues arise over a person's digital estate. First, the inheritability of the digital content must be determined. Only digital content for which the deceased holds the copyright may be passed down to an inheritor. There is a distinction in law between full ownership and right-to-use licenses such as in software, digital music, film and books and there is legal precedent for denying resale or bequest of these. Second, the heir or administrator of an estate must be able to access the content. This sometimes means navigating any online contracts or service provider's terms of service agreements regarding their policies on user privacy and user death.

Digital Assets can be broadly categorized into: Monetary assets (Online payment balances (e.g., PayTM, phone wallets), Personal Memory assets (photographs, videos, social media posts) and Identity based assets (Gmail accounts, professional profiles, messaging threads).

Each type of asset has its own distinct legal and practical problems. For example, while the loss of a photograph may cause sadness and emotional stress, the inaccessibility of cryptocurrency can incur permanent monetary loss. Many assets come under third-party control (e.g. Facebook, Instagram), that brings upon the service provider terms and international jurisdictional challenges.

The heirs may get full access to digital accounts of the deceased but then the question arises regarding the deceased's right to privacy. Email, messenger threads, cloud backups, and personal photographs can contain sensitive personal and private information. The question is should heirs be permitted to view all contents or should access be restricted to clearly financial or functional assets? This requires a proper balancing between depository access and data privacy rights and neither of these is sufficiently addressed under the current Indian law.

Many jurisdictions other than India have started to form legal framework on digital inheritance. The United States has **Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)** (2015). It empowers fiduciaries, such as executors or trustees to access digital assets if authorized, either by the user's estate planning documents or through an online tool.

In Germany's Federal Court of Justice (BGH) a notable case held that a deceased person's Facebook account could be inherited, linking it to letters or diaries rather than a mere service contract.

The France's Digital Republic Act clearly recognizes the right of individuals to provide instructions regarding their personal data after death, and allows next-of-kin to access digital assets under certain legal formalities.

These laws illustrate that digital inheritance is swiftly becoming a codified right. The balance is being created between access and privacy protections. Yet, India is lacking behind in statutory clarity regarding the digital inheritance.

The Digital Personal Data Protection Act, 2023, introduces a very promising concept that is the **"Right to Nominate"**. Under Section 14 and Rule 13, individuals can designate a nominee to manage or access their digital personal data after death or incapacitation. Though this nominal concept satisfies both data privacy and successor access, this concept remains largely untested and unenforceable. Without legislative enforcement and integration into existing succession law frameworks the concept is still void.

India's digital ecosystem is widely spread and is rapidly expanding. According to reports, the burgeoning number of internet users and increasing presence of digital entrepreneurs render digital assets economically valuable. Yet, courts and regulators lack authoritative guidance on succession for such assets.

Given these challenges, legal reform is not an option it is a necessity and urgently needed. Successor statutes should define what makes up digital assets, facilitate access without privacy violations, and give fiduciaries legal status to oversee digital estates. The drafting of a Digital Assets Succession Bill or amendments to the Hindu Succession Act and Indian Succession Act should be the topmost priority.

This study has the doctrinal and comparative analysis of digital inheritance in Indian succession law, and bridges the gap between evolving digital realities and old-fashioned legal frameworks. It will contribute to the practical legislative recommendations.

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## REVIEW

Globally, academic literature has begun to address digital inheritance as a complex interplay of property rights, privacy, and technological control. A recent comparative analysis of jurisdictional approaches identifies this issue as an urgent doctrinal frontier, observing that different countries vary widely in how they define and regulate digital assets such as cryptocurrencies, NFTs, and online accounts. In 국제 literature, digital inheritance is increasingly framed not merely as a personal estate issue but also as a matter of cultural and societal preservation.

The **Indian Succession Act, 1925** and **Hindu Succession Act, 1956** confer inheritance of movable and immovable property, still they give no reference to intangible digital or electronic assets. According to *Cyber Blog India*, the Act's silence leaves digital assets such as crypto, social media handles, or cloud drives without legal categorization as property, forcing reliance on shaky terms-of-service agreements or emergent jurisprudence.

Similarly, India's **Information Technology Act, 2000** prohibits unauthorized data access but does not provide heirs with legal authority to inherit digital content even when they are entitled to it by default under estate. This overlap of privacy prohibitions and property silence creates a regime where heirs may inadvertently commit cyber offences while trying to access digital assets.

The conflict between heirs' entitlement to access an estate and the deceased's right to privacy is a recurring theme. Indian legal frameworks presently offer no mechanism to mediate this tension neither the IT Act nor data protection legislation contemplates post-mortem rights in a structured way.

The **United States Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)** provides fiduciaries access to digital assets only if the user has consented via estate planning documents or online tools like Facebook's legacy contact or Google's inactive account manager feature.

The U.S. illustrates a model that respects privacy while offering legal authority through prior consent.

European courts have also moved proactively. In *Germany's Bundesgerichtshof ruling*, heirs were granted access to a deceased teenager's Facebook profile, reasoning that online letters and diaries should be inheritable akin to physical documents.

France's legislation similarly includes post-mortem controls over personal data in its **Digital Republic Act**, reinforcing that heirs may receive access under controlled circumstances.

Various Indian commentaries demand for comprehensive reforms and emphasize the necessity for a legislative framework like RUFADAA, including digital executors, estate planning inclusion, and automated digital asset cataloging tools.

Meanwhile, the advent of the **Digital Personal Data Protection Act, 2023** introduces a nascent concept, i.e., **Right to Nominate**, or fiduciary designation for access to personal data post-death, and a limited **Right to Correction and Erasure** under Section 12 of the Act. However, this data protection mechanism does *not extend* to digital asset inheritance and does not integrate with succession law, limiting its utility for estate administration.

Despite the growing need for the digital asset succession act, several gaps still persist:

- The property status of digital assets under the Indian personal law still remains unresolved. While IP succession has been given some

doctrinal treatments, digital assets especially crypto and social profiles are always ignored.

- Platform policies, though evolving (e.g., “legacy contacts”), are voluntary and inconsistent across providers. They do not create enforceable legal rights for heirs in India.
- Privacy inheritance conflict has been theorized, but no Indian case law or statutory guidance exists to implement, how to weight these rights after death in practice.
- There is a slight discussion on nomination regimes or data access tools within Indian context.

Indian literature on digital inheritance is *inadequate and fragmented*. Comparative models emphasize on consent-based fiduciary models or statutory rights for heirs, in spite of that India still has neither codified digital assets as property nor established access rule. Even though the *data protection law mentions nomination systems*, but without proper integration into succession law, these data remain theoretical.

This review emphasizes on a three-fold gap:

- The *lack of legal recognition* of digital assets as property
- The *absence of statutory or case law granting fiduciary access*
- The *missing integration* between digital data protection mechanisms and inheritance law.

These points justify a full doctrinal and comparative study to propose legislative reform in India's succession framework.

## METHODOLOGY

### 1. A DOCTRINAL ANALYSIS

- **Objectives**

In the digital era, individuals accumulate a wide variety of intangible, non-physical assets ranging from cryptocurrencies, email archives, and social media profiles to cloud-stored documents and digital wallets. These assets often have both emotional and monetary value. However, Indian legal frameworks for succession, property, privacy, and technology do not comprehensively account for the inheritance and postmortem management of these digital estates. This research, therefore, aims to bridge the legal gaps by evaluating the inadequacies of the existing Indian legal framework and suggesting feasible legislative and policy reforms.

The primary objectives of this research are:

- 1) To identify and categorize digital assets in the context of inheritance law and evaluate whether they fall under the existing definitions of property in Indian legal statutes.
- 2) To assess the applicability and limitations of the Hindu Succession Act, Indian Succession Act, Information Technology Act, and the Digital Personal Data Protection Act (DPDP Act, 2023) with respect to posthumous control over digital data and assets.
- 3) To explore how policies of digital service providers override or influence terms of service (ToS) and privacy inheritance rights in India, in the absence of statutory clarity.
- 4) To conduct a doctrinal analysis of Indian legislation and case law, highlighting the need for the legal recognition of digital inheritance.
- 5) To perform a comparative legal analysis of how jurisdictions such as the United States, Germany, France, and the UK have addressed digital succession and the transfer of postmortem digital data.
- 6) To propose a model framework for the recognition, governance, and regulation of digital inheritance in India.
- 7) To analyze ethical and privacy considerations, particularly whether the rights to privacy and data ownership of a deceased person persist posthumously, and how such rights intersect with the legal rights of heirs.

- **Theoretical Basis of the Study**

To frame this research, a robust theoretical foundation is necessary. The study draws on several interdisciplinary legal theories to ensure academic depth and policy relevance.

- 1) **Property Theory and Digital Assets**

Traditional property theories, such as Locke's labor theory of ownership, emphasize the transformation of personal effort into ownership rights. Digital assets created, curated, or managed by individuals online may be seen as extensions of personal labor. Yet, Indian succession laws currently limit property rights to tangible and monetary forms, excluding most digital assets. Thus, one theoretical task of this study is to argue conceptually that digital assets may constitute “movable property” or actionable claims under Indian law.

- 2) **Succession Law & Universal Transmission**

Succession principles in civil law countries, particularly universal succession under Germany's Civil Code 1922, automatically transfer all rights and obligations of the deceased (including contracts) to heirs. The landmark ruling by Germany's Federal Court of Justice (BGH) in 2018 holding that a deceased's Facebook account is inheritable exemplifies this doctrine. Similar

statutory models like RUFADAA in the U.S. grant fiduciary access based on the user's prior consent. The theoretical insight here is that India may adapt elements of both consent-based and universal transmission models to secure digital inheritance rights.

### 3) Privacy Theory & Postmortem Rights

In *K.S. Puttaswamy v. Union of India* (2017), privacy was recognized as a fundamental right. Whether such rights survive death or are passed to heirs is unclear. The ethical tension arises when heirs claim access to communications or content that reveal intimate personal data. Indian law currently lacks clarity on whether the deceased's privacy interests continue, or whether executor representations override them. This research theorizes a balanced approach, inspired by French law, where individuals can specify post-mortem data instructions to heirs.

### 4) Sociological Jurisprudence & Legal Reform

Roscoe Pound's sociological jurisprudence asserts that law should evolve in line with societal needs. India's digital ecosystem now includes e-businesses, influencers, crypto holder's people whose principal assets exist online. The lack of legal mechanisms to transfer digital estates causes both emotional harm and financial loss to heirs. A doctrinal gap in law undermines the justice system's responsiveness to technological reality, reinforcing the need for legal reform that reflects both civil justice and societal change.

### 5) Comparative Law and Functionalism

By applying functional comparative methodology, this study examines how other jurisdictions deal with digital inheritance issues efficiently highlighting concepts like consent-based access (U.S. RUFADAA), universal succession (Germany), and statutory instruction rights (France). Inspired by functionalist theory, the goal is not to transplant laws but to derive legal mechanisms that can be localized and integrated into India's pluralistic legal system.

## • Statutory Analysis

### a) Hindu Succession Act (HSA), 1956 and Indian Succession Act (ISA), 1925

The cornerstone of inheritance law in India, the *Hindu Succession Act (HSA)*, 1956 and the *Indian Succession Act (ISA)*, 1925, govern distribution of a deceased's movable and immovable property. However, neither Act mentions *digital assets* explicitly. Section 2(h) of ISA defines "will" in terms of property, while Section 5 limits applicability to movable and immovable assets without any reference to digital or electronic property. As a result, assets like cryptocurrencies, cloud-stored data, or email accounts have no statutory position: they do not fit into recognized categories of *movable property*, nor are they actionable claims.

Moreover, while ISA allows for bequests via wills, digital assets cannot be lawfully disposed of unless considered as property under existing definitions.

### b) Information Technology Act, 2000:

The *IT Act of 2000* primarily addresses cybercrimes and electronic commerce, defining offences such as unauthorized access (S.66), tampering (S.65), and misuse of credentials (S.66C–D). Accessing a deceased person's digital account even by a rightful heir may constitute illegal access in the absence of explicit legal permission. This creates a chilling effect where heirs face potential criminal charges under Sections 43 or 66 of the IT Act despite acting in good faith.

Furthermore, Section 1(4) of the IT Act excludes wills from its purview even if signed electronically; meaning *digital wills* are not legally recognized under current law. This absence prevents digital testamentary documents from being used to bequeath digital assets.

### c) Digital Personal Data Protection Act (DPDP Act), 2023:

The DPDP Act, 2023 introduces modern data protection principles, including a unique "Right to Nominate" under Section 14, allowing a Data Principal to designate a nominee to exercise their data rights post death or incapacity. Rule 13 under the DPDP Rules 2025 further elaborates nomination procedures.

However, this right has limits:

- It applies only to personal data, not to digital assets like crypto or intellectual content.
- It does not integrate automatically into succession processes or estate law procedures.
- Judicial precedent (e.g. *Ruba Ahmed vs. Hansal Mehta*, *Krishna Kishore Singh vs. Sarla Saraogi*) has clarified that privacy rights are not inheritable, and nomination does not equate to inheritance rights.

Therefore, while DPDP offers a starting point for fiduciary access, it does not provide a legal mechanism for digital inheritance

within estate administration.

- **Case Law Exploration**

- *Justice K.S. Puttaswamy v. Union of India (2017)*

This landmark judgment established the *right to privacy* as a fundamental right. However, the Supreme Court clarified that *privacy does not survive death*, suggesting that *heirs cannot claim a deceased person's privacy rights*, thereby raising a conflict when digital accounts are accessed posthumously.

*"The right to privacy is not inheritable or enforceable by the heirs of a deceased individual."* – (Puttaswamy, 2017)

- *Deepa Jayakumar v. A.L. Vijay (2020)*

The Madras High Court refused to recognize any posthumous privacy or reputation rights, even for public figures, indicating that legal control over digital legacy cannot be claimed by family.

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

The Delhi High Court held that *personality and publicity rights* are non-transferable upon death, reinforcing the problem of *lack of inheritable digital identity rights*.

- **Doctrinal Questions**

As digital footprints expand from social media profiles and cryptocurrency holdings to cloud storage and digital documents the question arises, what happens to these assets after death? The law traditionally revolves around physical and monetary assets, but in today's digitized world, this approach falls short. This section presents the *doctrinal questions* forming the backbone of this research.

The following doctrinal questions are essential to this study:

- a) **Can digital assets be classified as "property" under Indian succession law?**

Yes, digital assets can conceptually be classified as property under Indian law, though there is no explicit statutory provision yet. The Indian Succession Act, 1925, defines property broadly to include both movable and immovable assets, and courts have interpreted "property" in a wide sense. However, Indian statutes still focus on tangible and monetary property. Digital assets like cryptocurrency, cloud storage, digital files, and monetized social media accounts qualify as intangible movable property, akin to intellectual property or shares. Hence, from a doctrinal standpoint, they can fall under the inheritance regime by analogy.

- b) **Do heirs have a legal right to access the deceased's digital accounts?**

No, it is not clearly mentioned under current Indian law. There is no statutory provision granting automatic or explicit rights to heirs for accessing a deceased person's digital accounts or data. While heirs may argue their right under succession law, digital platforms often deny access due to contractual terms or lack of legal authority, requiring court intervention.

This legal vacuum leaves:

- No standard procedure for digital account access.
- Risk of privacy violations.
- Uncertainty in enforcing inheritance rights.

- c) **Are existing Indian legal frameworks sufficient to govern postmortem data and digital inheritance?**

No. Indian legal frameworks are insufficient to handle digital inheritance or postmortem data issues.

Major shortcomings:

- No recognition of digital assets as a separate category of property
- No succession procedure or fiduciary access law for digital property
- Ambiguity in terms of privacy rights, data access, and consent post-death
- No authority or model legal pathway for executors or heirs to access such accounts

Existing frameworks like the Indian Succession Act or IT Act are outdated and do not contemplate non-physical assets such as cryptocurrencies, social media, or cloud-stored data.

Thus, India lacks:

- A data inheritance framework
- Recognition of postmortem data ownership
- Provisions for digital wills or fiduciary authorizations

**d) What doctrinal reforms are necessary to ensure legal clarity and access for heirs?**

To ensure legal clarity and lawful access, doctrinal reforms must address both classification and procedure for handling digital inheritance. Proposed reforms include:

**1. Legal Definition of Digital Assets**

- A statutory amendment to define “digital assets” and include them under the ambit of “property” in succession law.

**2. Digital Estate Planning Framework**

- Recognize and facilitate digital wills, digital asset inventories, and executor authority to handle digital accounts.

**3. Fiduciary Access Provision**

- A law modeled on RUFADAA, allowing lawful access to digital assets by court-appointed executors or heirs, subject to consent or express instruction in a will.

**4. Postmortem Data Regulation**

- Establish rights of heirs to access data stored in digital format (emails, cloud files, social media) without breaching privacy, based on consent structures.

**5. Guidelines for Online Platforms**

- Mandate standard mechanisms (e.g., digital legacy contacts, account nomination, and inheritance settings) on digital platforms under Indian jurisdiction.

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## 2. A COMPARITIVE ANALYSIS

India currently lacks a statutory framework to govern inheritance of digital assets like social media accounts, cryptocurrency, or email archives. To forge an effective legal doctrine, it is essential to understand functional analogs adopted by other jurisdictions. This comparative analysis draws on the United States (RUFADAA), Germany (BGH Facebook case), France (Digital Republic Act), and available practices in the United Kingdom, extracting actionable insights for India.

- **United States: RUFADAA – A Consent-Based Fiduciary Model**  
The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), adopted in over 45 U.S. states, provides a statutory regime empowering court-appointed fiduciaries (e.g., executors or trustees) to access a deceased person’s digital assets provided the decedent had consented via a will, online tool, or platform feature.
- Mechanism: Fiduciaries receive clear legal authority to access digital content and metadata.
- Tiered Access: Defines access types: content, non-content records, or full estate including distinction in scope (S.3–4 RUFADAA).
- Platform Mandates: Companies must comply irrespective of contradictory terms of service.
- Why it matters for India: RUFADAA’s design ensures heirs’ rights without entirely overriding user privacy, relying on prior consent mechanisms. Its tiered structure offers flexibility adaptable to India’s pluralistic legal system.
- **Germany: BGH Facebook Ruling & Universal Succession**  
Germany’s Federal Court of Justice (*Bundesgerichtshof*, BGH) in Case III ZR 183/17 (2018) ruled that a deceased user’s Facebook contract passes to the heirs through universal succession under § 1922(1) of the *Bürgerliches Gesetzbuch* (BGB).
- Judicial Timeline:
  - Landgericht Berlin (2015): Ordered access.
  - Kammergericht Berlin (2017): Denied access citing telecommunications secrecy (§ 88 TKG).
  - BGH (2018): Reversed, affirming that social media contracts are inheritable; heirs have full access rights excluding active use.
- Foundational Principles:
  - Platform TOS and jurisdiction clauses inconsistent with succession law are unenforceable (§ 307 BGB).
  - Telecommunications secrecy does not apply to heirs, who succeed into the deceased’s account position.

- GDPR does not apply to deceased persons; heirs' access is justified under contractual performance and legitimate interest bases under EU law.

Implications for India: Germany's model integrates digital contracts into existing law rather than overhauling it, suggesting India might adapt succession principles to treat digital accounts as inheritable contracts, overriding platform terms where they conflict.

- **France: La République Numérique & Posthumous Data Directives**

The French Digital Republic Act (Loi pour une République numérique, 2016) introduced statutory rights enabling individuals to issue detailed posthumous data instructions:

- Article 63 grants users the right to define:
  - Whether their personal data should be deleted, transferred, or preserved.
  - A designated executor (fiduciary) to enforce these directives.
- Platforms must inform users of these options and cannot enforce TOS clauses limiting such rights. Any conflicting clause is deemed null and void.

Why this matters: This gives legal recognition to user autonomy over digital legacies and ensures that heirs can act on explicit instructions or otherwise default to statutory rules. It sidesteps doctrinal ambiguity by creating a statutory path.

- **United Kingdom: Case-by-Case Practice with Regulatory Guidance**

Although the UK has no uniform digital inheritance legislation, courts and regulators are increasingly addressing the issue.

- Probate Courts have ordered access to digital accounts including email and crypto based on standard executor powers.
- The Financial Conduct Authority (FCA) offers guidance on managing digital financial assets.
- British courts tend toward flexible, case-sensitive rulings balancing fiduciary obligations with privacy norms.

Takeaway: The UK highlights the necessity of judicial discretion within existing frameworks, India too might benefit from early case law before formal legislation.

- **LESSONS FOR INDIA**

1. **Hybrid Consent-Succession Model**

Drawing on RUFADAA and French frameworks, India could combine:

- User-appointed nominees/executors via online tools.
- Default inheritance rights to digital assets under succession law (akin to German universal succession).

2. **Platform Regulation**

Digital platforms must be legally bound to accept nominations and cannot enforce TOS clauses restricting heirs' lawful access similar to France's statutory nullification of restrictive clauses.

3. **Classification & Scope**

India should establish a clear typology of inheritable digital assets: financial (crypto), contractual (social accounts), and memory-based (photos) with differentiated access rights.

4. **Privacy Safeguards**

Respect *Puttaswamy*'s recognition of privacy as a fundamental right for living individuals, while granting heirs access to data required for estate settlement. India could mirror France's consent-based directive system with redaction options for sensitive content.

5. **Incorporation into Probate**

India can make law to implement digital asset inventories as part of probate disclosure, mandating executors to list and manage such assets under supervision.

6. **TOS Override Legislation**

Mirror Germany's § 307 invalidation of unfair contract clauses: India should single out platform terms denying inheritance rights as void if conflicting with statutory succession law.

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## RESULT

### Key Findings:

- **Absence of Clear Legal Recognition of Digital Assets in Indian Succession Law**

The doctrinal analysis revealed that Indian succession laws primarily the **Hindu Succession Act, 1956** and the **Indian Succession Act, 1925** fail to provide any specific classification or treatment of digital assets. While these statutes allow the transfer of "property," including intangible property, the term has not been extended in practice to include data, digital accounts, or virtual possessions such as:

- Cryptocurrency wallets
- Cloud storage data
- Email accounts
- Social media accounts
- Subscription-based digital collections (e-books, music, movies)

This legislative silence leads to confusion, denial of access to rightful heirs, and inconsistent approaches by platforms and estate managers.

- **Criminalization of Access by Heirs**

Laws like the **Information Technology Act, 2000**, especially Sections 43 and 66, may unintentionally criminalize access to digital assets by legal heirs if done without explicit authorization. In the absence of a nominee or testamentary instruction, even genuine family members trying to retrieve a deceased's account or information risk legal liability.

- **Lack of Legal Framework for Post-Mortem Data Privacy**

The **Digital Personal Data Protection Act, 2023** (DPDP Act) does not comprehensively address the fate of an individual's data posthumously. While Section 14 allows for the nomination of a person for data management, there is no mechanism to integrate such nomination with succession laws or inheritance procedures. Additionally, the Act remains silent on whether data privacy rights survive death, leading to a vacuum in terms of posthumous data control.

- **International Best Practices Offer Viable Models**

The comparative analysis highlighted several effective legal approaches from jurisdictions such as:

- **United States (RUFADAA)**: Establishes a consent-based model where fiduciaries (executors, attorneys) may access a deceased person's digital assets if they were appointed in a will or online tool.
- **Germany (BGH Decision 2018)**: Treats digital contracts as inheritable under universal succession, invalidating contrary clauses in platform terms of service.
- **France (Digital Republic Act, 2016)**: Allows individuals to specify instructions regarding the fate of their data post-mortem, including deletion or access by heirs.

These examples show that legal systems can balance the rights of privacy, user intent, and successor-ship through well-defined, enforceable norms.

- **Platform Terms of Service (TOS) Inhibit Legal Successor-Ship**

Most technology companies operating in India like Google, Facebook, and Instagram adhere to restrictive **Terms of Service** that either disallow posthumous access or require court orders. In the absence of Indian statutory guidance, these corporate policies effectively supersede any successor-ship rights under Indian law.

### Legislative Suggestions: Framework for a Digital Assets Succession Bill

To bridge the identified legal gaps and harmonize with global best practices, this study proposes the enactment of a **Digital Assets Succession and Management Act**, which would work in coordination with existing succession laws and data protection frameworks.

Below are key structural and substantive components recommended for inclusion in the Bill:

#### 1. Definition of Digital Assets

A detailed definition of "digital assets" must be codified. Suggested categories include:

- **Personal data and content** (emails, messages, cloud files)
- **Digital accounts** (social media, e-commerce, banking platforms)
- **Virtual property** (cryptocurrencies, NFTs, online game assets)
- **Licenses and subscriptions** (e-books, cloud licenses)
- **Metadata and login credentials**

#### 2. Recognition of Digital Asset Executor/Nominee

- Allow individuals to **appoint a digital asset nominee or executor** through wills, digital consent forms, or platform tools.
- Mandate platforms to **recognize such appointments**, irrespective of restrictive TOS, unless otherwise overridden by testamentary documents.

#### 3. Right to Access for Legal Representatives

- Empower legal heirs, executors, or nominees to access and manage digital assets after the individual's death.
- The access shall be:
  - **Tiered**: Content access vs. metadata access.
  - **Restricted** to lawful purposes (retrieving information, transferring assets, or deletion).

#### 4. Override of Contradictory Platform Terms

- Introduce a statutory clause rendering any platform TOS that **completely restricts** posthumous access **unenforceable**, if it conflicts with the rights of the legal heir or executor.

#### 5. Inclusion in Probate Process

- Amend the **Indian Succession Act, 1925**, and allied laws to include digital assets within the inventory of the deceased's estate, requiring disclosure and transfer during **probate or letters of administration**.

#### 6. Default Rule in Absence of Nomination

- In the absence of a will or nomination, access to digital assets should follow the **general rule of intestate succession**, where the nearest kin becomes the rightful manager.
- A standard **cooling-off period** (e.g., 90 days post-death) can be prescribed before access is granted to avoid misuse.

#### 7. Privacy Safeguards

- Heirs' rights must be balanced with the **privacy interests** of the deceased, especially for sensitive data (e.g., private emails, search history).
- Provisions may allow data minimization, redaction, or **partial access**, guided by court-supervised processes if needed.

#### 8. Integration with DPDP Act and IT Act

- Cross-reference the nominee appointment under the **DPDP Act, 2023**, with the executor model in the new Bill.
- Ensure immunity for legal heirs accessing data in good faith from liability under Sections 43/66 of the **IT Act, 2000**.



## CONCLUSION

The digital age has transformed the way we live, communicate, store information, and manage assets. Yet, while digital innovation has advanced rapidly, the Indian legal framework has not kept pace especially in addressing the increasingly complex issues surrounding digital inheritance and postmortem data rights. The absence of specific laws governing the succession of digital assets in India creates ambiguity for legal heirs, fiduciaries, and digital service providers alike, resulting in inconsistent outcomes, privacy concerns, and a lack of enforceability.

This research has shown that digital assets are no longer incidental to life; they are core components of identity, legacy, finance, and property. As such, their succession must be treated with the same seriousness as traditional physical or financial assets. However, current Indian succession laws whether under the Indian Succession Act, 1925, personal laws, or probate processes fail to address whether, how, or under what conditions digital assets can be inherited.

A doctrinal analysis revealed that the foundational principles of Indian inheritance law could, in theory, be extended to digital property, particularly in view of the concept of testamentary freedom and estate administration. Yet, the unique nature of digital assets being intangible, access-controlled, globally hosted, and often governed by user agreements requires explicit legal recognition and mechanisms for enforcement. Without legislative intervention, key legal questions remain unanswered: Who has the right to access the deceased's data? How is consent presumed or overridden? Are digital platforms obligated to cooperate with heirs?

The comparative analysis of jurisdictions such as the United States, Germany, France, and the United Kingdom illustrates a variety of legal models addressing this challenge. The U.S. approach, through RUFADAA, balances fiduciary authority with user consent and platform cooperation. Germany's universal succession model under the BGB makes digital contracts inheritable, aligning them with property rights. France provides individuals the statutory right to issue posthumous data directives, thereby prioritizing digital autonomy. The UK offers a flexible, case-specific approach that adapts to circumstances and encourages judicial innovation.

Drawing from these systems, it is evident that India should pursue a hybrid model combining statutory guidance, testamentary tools, platform compliance requirements, and user-directed consent mechanisms. A Digital Assets Succession Bill should be introduced to address core legal gaps by:

- Defining what constitutes a digital asset;
- Creating rights of access and administration for legal heirs;
- Enabling users to appoint digital executors or nominees;
- Requiring platforms to comply with court or executor requests;
- Overriding restrictive or unfair Terms of Service agreements; and
- Respecting individual privacy and consent in the afterlife of data.

Furthermore, such legislation must be harmonized with the Digital Personal Data Protection Act (DPDP), 2023, and the Information Technology Act, 2000, to ensure procedural consistency and rights-based enforcement.

In conclusion, India stands at a critical juncture in determining whether digital death will result in digital disappearance or responsible digital legacy. A robust, clear, and inclusive legal framework for digital inheritance is not merely a legislative requirement it is a social, ethical, and constitutional imperative. As individuals continue to live increasingly digital lives, the Indian legal system must ensure that they can also leave behind a legally accessible and protected digital legacy.

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